

Exhibit 3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

ANTHONY BAFFO,

Plaintiff,

Index No.

10 Civ 1245

-against-

(LDW) (ETB)

NEW YORK INSTITUTE OF TECHNOLOGY;
ROBERT RIZZUTO, in his official and
individual capacities; and LEONARD
AUBREY, in his official and individual
capacities,

Defendants.

-----x

March 22, 2011

10:05 a.m.

Videotaped deposition of ROBERT
RIZZUTO, held at the offices of Thompson Wigdor &
Gilly LLP, 85 Fifth Avenue, New York, New York,
pursuant to Notice, before Lynne D. Metz, a
Shorthand Reporter and Notary Public of the State
of New York.

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516-608-2400

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<p>1</p> <p>2 APPEARANCES:</p> <p>3</p> <p>4 THOMPSON WIGDOR & GILLY LLP</p> <p>5 Attorneys for Plaintiff</p> <p>6 85 Fifth Avenue</p> <p>7 New York, New York 10003</p> <p>8 BY: GREGORY N. FILOSA, ESQ.,</p> <p>9 of Counsel</p> <p>10</p> <p>11</p> <p>12 FULBRIGHT & JAWORSKI L.L.P.</p> <p>13 Attorneys for Defendants</p> <p>14 666 Fifth Avenue</p> <p>15 New York, New York 10103</p> <p>16 BY: NEIL G. SPARBER, ESQ.,</p> <p>17 of Counsel</p> <p>18</p> <p>19</p> <p>20 ALSO PRESENT:</p> <p>21 Anthony Baffo</p> <p>22 Drew Cerria - Videographer</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 THE VIDEOGRAPHER: We are now on the</p> <p>3 record. My name is Drew Cerria. I</p> <p>4 represent Veritext New York. The date today</p> <p>5 is Tuesday March 22, 2011 and the time is 10:05:45</p> <p>6 approximately 10:05 a.m.</p> <p>7 Today's deposition is being held at</p> <p>8 the law offices of Thompson Wigdor & Gilly</p> <p>9 LLP which is located at 85 Fifth Avenue New</p> <p>10 York City, New York 10003. We are on the 10:06:02</p> <p>11 fifth floor.</p> <p>12 The caption of today's case is Anthony</p> <p>13 Baffo versus New York Institute of</p> <p>14 Technology, Robert Rizzuto, in his official</p> <p>15 and individual capacities and Leonard Aubrey 10:06:19</p> <p>16 in his individual and official capacities in</p> <p>17 the United States District Court Eastern</p> <p>18 District of New York number 10 Civ 1245</p> <p>19 (LDW)(ETB).</p> <p>20 Our witness today is Mr. Robert 10:06:39</p> <p>21 Rizzuto, and at this time if our attorneys</p> <p>22 will identify themselves, their firms and</p> <p>23 the parties they represent after which our</p> <p>24 reporter Miss Lynne Metz, also of Veritext,</p> <p>25 will swear Mr. Rizzuto and we will begin. 10:06:51</p>
Page 3	Page 5
<p>1</p> <p>2 IT IS HEREBY STIPULATED, by and between the</p> <p>3 attorneys for the respective parties hereto, that:</p> <p>4 All rights provided by the C.P.L.R., and Part 221</p> <p>5 of the Uniform Rules for the Conduct of</p> <p>6 Depositions, including the right to object to any</p> <p>7 question, except as to form, or to move to strike</p> <p>8 any testimony at this examination is reserved; and</p> <p>9 in addition, the failure to object to any question</p> <p>10 or to move to strike any testimony at this</p> <p>11 examination shall not be a bar or waiver to make</p> <p>12 such motion at, and is reserved to, the trial of</p> <p>13 this action.</p> <p>14</p> <p>15 This deposition may be sworn to by the witness</p> <p>16 being examined before a Notary Public other than</p> <p>17 the Notary Public before whom this examination was</p> <p>18 begun, but the failure to do so or to return the</p> <p>19 original of this deposition to counsel, shall not</p> <p>20 be deemed a waiver of the rights provided by Rule</p> <p>21 3116 of the C.P.L.R. and shall be controlled</p> <p>22 thereby.</p> <p>23</p> <p>24 The filing of the original of this deposition is</p> <p>25 waived.</p>	<p>1 R. Rizzuto</p> <p>2 MR. FILOSA: Gregory Filosa with</p> <p>3 Thompson Wigdor & Gilly for plaintiff</p> <p>4 Anthony Baffo.</p> <p>5 MR. SPARBER: Neil Sparber for 10:06:58</p> <p>6 Fulbright & Jaworski for the defendants.</p> <p>7 ROBERT RIZZUTO,</p> <p>8 called as a witness, having been first duly sworn</p> <p>9 by the Notary Public (Lynne D. Metz), was</p> <p>10 examined and testified as follows:</p> <p>11 EXAMINATION BY</p> <p>12 MR. FILOSA:</p> <p>13 Q. Mr. Rizzuto, could you please state</p> <p>14 your full name for the record?</p> <p>15 A. Yes, Robert James Rizzuto. 10:07:18</p> <p>16 Q. Now as I indicated on the record, my</p> <p>17 name is Greg Filosa. I am an attorney with</p> <p>18 Thompson Wigdor & Gilly and we represent the</p> <p>19 plaintiff in this matter. We have asked you to</p> <p>20 come down today to answer a few questions about 10:07:29</p> <p>21 information that you may have about this case.</p> <p>22 Have you ever testified at a</p> <p>23 deposition before?</p> <p>24 A. No.</p> <p>25 Q. So I am going to go over a few ground 10:07:39</p>

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<p style="text-align: right;">Page 14</p> <p>1 R. Rizzuto</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall what those documents</p> <p>4 were?</p> <p>5 A. There were a few e-mails. Calendar, 10:14:26</p> <p>6 some calendar events that were on my calendar.</p> <p>7 Q. Were they documents that you had seen</p> <p>8 before?</p> <p>9 A. I had not seen them before that.</p> <p>10 Q. Did they refresh your recollection as 10:14:43</p> <p>11 to events that had happened in the past?</p> <p>12 A. In some ways, yes.</p> <p>13 Q. So these documents they consisted of</p> <p>14 e-mails and calendar entries?</p> <p>15 A. Yes. 10:14:55</p> <p>16 Q. Were there any other types of</p> <p>17 documents that you reviewed?</p> <p>18 A. We spoke of postings for jobs on</p> <p>19 Monster I think it was. I am not sure exactly</p> <p>20 where they were posted from. That was one of the 10:15:14</p> <p>21 other things we put there.</p> <p>22 Q. Now at any point did you search your</p> <p>23 records for documents related to this case?</p> <p>24 A. I did in the past, not a lot. I did</p> <p>25 in the past, but recently no. 10:15:33</p>	<p style="text-align: right;">Page 16</p> <p>1 R. Rizzuto</p> <p>2 That was pretty much it.</p> <p>3 Q. Did you search through your electronic</p> <p>4 files for any documents that you believe related</p> <p>5 to this case? 10:16:57</p> <p>6 A. Yes.</p> <p>7 Q. And where -- what electronic files did</p> <p>8 you search?</p> <p>9 A. Just I would always file them -- if it</p> <p>10 was a memo or a meeting I would go to that part 10:17:05</p> <p>11 and say memo. I would always start like -- you</p> <p>12 know that's how I knew where to find things or</p> <p>13 meeting.</p> <p>14 Q. And what did you do to search your</p> <p>15 electronic files for documents that you thought 10:17:15</p> <p>16 might be related to this?</p> <p>17 A. Just went into My Documents and looked</p> <p>18 at memos and went down a list to see who the memo</p> <p>19 was to.</p> <p>20 Q. Did you use any search terms like 10:17:25</p> <p>21 searching for Mr. Baffo's name?</p> <p>22 A. I am sure I did.</p> <p>23 Q. Do you know what search terms you</p> <p>24 used?</p> <p>25 A. No, I don't recall. 10:17:35</p>
<p style="text-align: right;">Page 15</p> <p>1 R. Rizzuto</p> <p>2 Q. In the past, what did you do to search</p> <p>3 for documents?</p> <p>4 A. Just go into my inbox or sent e-mails</p> <p>5 and I had files with different people's names on 10:15:43</p> <p>6 my Outlook and just looked in there.</p> <p>7 Q. Did you find any documents in that --</p> <p>8 well, strike that.</p> <p>9 Did you have a file -- strike that.</p> <p>10 The files you are talking about, are 10:16:01</p> <p>11 they in your Outlook or are they on your hard</p> <p>12 drive or your desktop?</p> <p>13 A. I didn't find much. So I would</p> <p>14 imagine -- I had one file. So that would have</p> <p>15 been on I guess my hard drive. I don't understand 10:16:16</p> <p>16 the computer that much, but there wasn't much</p> <p>17 there.</p> <p>18 Q. So was there a file in Outlook, a file</p> <p>19 of e-mails; correct?</p> <p>20 A. Yes. 10:16:28</p> <p>21 Q. And separate from a file and e-mails</p> <p>22 did you have a separate file on your desktop or</p> <p>23 your My Documents that pertained to Mr. Baffo?</p> <p>24 A. There is one that I can recall of. A</p> <p>25 memo to Len Aubrey that would be in my documents. 10:16:42</p>	<p style="text-align: right;">Page 17</p> <p>1 R. Rizzuto</p> <p>2 Q. Did anyone ask you to use any search</p> <p>3 terms or search these files?</p> <p>4 A. No, no. Nobody asked me to do that at</p> <p>5 all anyway. 10:17:45</p> <p>6 Q. So what did you do when you found</p> <p>7 these, any electronic files that you thought might</p> <p>8 be relevant to this case?</p> <p>9 A. I was looking for one specific one</p> <p>10 that I believe that I wrote to Len Aubrey back in 10:17:56</p> <p>11 August about this and about wanting to terminate</p> <p>12 or revamp the operation concerning Anthony and I</p> <p>13 couldn't find it and to this day I felt like it</p> <p>14 was there and I knew I wrote it, but couldn't find</p> <p>15 it. That's really what I was looking for. There 10:18:18</p> <p>16 was nothing else there of any substance.</p> <p>17 Q. So you believe you wrote a memo to Len</p> <p>18 Aubrey in August --</p> <p>19 A. Yes.</p> <p>20 Q. -- of 2009 that referenced the 10:18:27</p> <p>21 elimination of Mr. Baffo's --</p> <p>22 A. Yes.</p> <p>23 Q. -- position? If you could just wait</p> <p>24 until I --</p> <p>25 A. I'm sorry. 10:18:32</p>

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<p style="text-align: right;">Page 18</p> <p>1 R. Rizzuto</p> <p>2 Q. -- for the court reporter's sake wait</p> <p>3 until I finish the question.</p> <p>4 You believe you wrote a memo in August</p> <p>5 of 2009 to Mr. Aubrey that referenced the 10:18:43</p> <p>6 elimination of Mr. Baffo's position?</p> <p>7 A. Yes.</p> <p>8 Q. But you were unable to find that</p> <p>9 document?</p> <p>10 A. No. 10:18:50</p> <p>11 Q. Where did you search for that</p> <p>12 document?</p> <p>13 A. In My Documents.</p> <p>14 Q. Would it have been maintained anywhere</p> <p>15 else other than in your My Documents folder? 10:18:58</p> <p>16 A. No.</p> <p>17 Q. But ultimately at the end of the day</p> <p>18 you weren't able to find it?</p> <p>19 A. Yeah. There was one specific file I</p> <p>20 was looking for too because I wanted to write 10:19:06</p> <p>21 Anthony up for lateness also back then and Len for</p> <p>22 some reason, to this day I don't know why, told me</p> <p>23 not to do it and I was looking for that document</p> <p>24 too and couldn't find that as well.</p> <p>25 Q. What document are you referring to? 10:19:20</p>	<p style="text-align: right;">Page 20</p> <p>1 R. Rizzuto</p> <p>2 Q. So it was one memo from either 2008 or</p> <p>3 2009 about lateness?</p> <p>4 A. Yes.</p> <p>5 Q. Did you search -- strike that. 10:20:25</p> <p>6 Did you ask Mr. Aubrey whether or not</p> <p>7 he had a copy of the memo that you thought that</p> <p>8 you wrote to him in August of 2009 about the</p> <p>9 elimination of Mr. Baffo's position?</p> <p>10 A. Yes. 10:20:36</p> <p>11 Q. And what did you do? Did he have it?</p> <p>12 A. No.</p> <p>13 Q. Did he recall that memo?</p> <p>14 A. No.</p> <p>15 Q. So do you have any understanding of 10:20:47</p> <p>16 whether or not you actually wrote that memo in</p> <p>17 August of 2009?</p> <p>18 A. I really believe that I did.</p> <p>19 Q. But you have no documents which would</p> <p>20 show that? 10:20:56</p> <p>21 A. No.</p> <p>22 Q. And you would have expected you had</p> <p>23 written a memo in August of 2009 it would have</p> <p>24 been saved to your computer, right?</p> <p>25 A. Sure. 10:21:03</p>
<p style="text-align: right;">Page 19</p> <p>1 R. Rizzuto</p> <p>2 A. It's a -- Anthony had a habitual</p> <p>3 lateness problem and wanted to write him up. I</p> <p>4 actually created the document and when I brought</p> <p>5 it to Len he said no, hold off on that. 10:19:31</p> <p>6 Q. Do you recall when that was that you</p> <p>7 wrote the document?</p> <p>8 A. It was either 2008 or 2009. It was</p> <p>9 earlier.</p> <p>10 Q. And why were you looking for that 10:19:42</p> <p>11 document?</p> <p>12 A. Just because part of this was you know</p> <p>13 performance.</p> <p>14 Q. And you thought that demonstrated --</p> <p>15 strike that. 10:19:56</p> <p>16 What did you think that that</p> <p>17 demonstrated?</p> <p>18 A. Habitual problem of lateness.</p> <p>19 Q. And that was dating back to 2008,</p> <p>20 2009? 10:20:08</p> <p>21 A. I believe so.</p> <p>22 Q. Were there any other performance</p> <p>23 related documents that you remembered that during</p> <p>24 that time period that you were looking for?</p> <p>25 A. No. 10:20:16</p>	<p style="text-align: right;">Page 21</p> <p>1 R. Rizzuto</p> <p>2 Q. Did you search any of your -- strike</p> <p>3 that.</p> <p>4 Did you maintain any hard copy files</p> <p>5 in your office about any of your, any employees of 10:21:10</p> <p>6 the de Seversky Center?</p> <p>7 A. Nothing consistently, but some.</p> <p>8 Q. Did you search these hard copy files</p> <p>9 for anything related to Mr. Baffo or this lawsuit?</p> <p>10 A. No. 10:21:22</p> <p>11 Q. Did anyone ask you to search those</p> <p>12 files?</p> <p>13 A. No.</p> <p>14 Q. So to this day you haven't searched</p> <p>15 any of the hard copy files? 10:21:29</p> <p>16 A. No.</p> <p>17 Q. Where are they maintained?</p> <p>18 A. They were maintained in a terrible</p> <p>19 filing system that I had which is better today,</p> <p>20 but in the file cabinet. 10:21:38</p> <p>21 Q. Where is that file cabinet?</p> <p>22 A. In my desk draw.</p> <p>23 Q. Does anyone else have access to this</p> <p>24 file cabinet?</p> <p>25 A. No. 10:21:47</p>

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1 R. Rizzuto
 2 were no longer in that position?
 3 A. I was in charge of overseeing the
 4 entire culinary operation, purchasing.
 5 Q. And when you say the entire culinary 10:56:25
 6 operation, you are referring to the de Seversky
 7 Center?
 8 A. Yes.
 9 Q. And purchasing, is that just for the
 10 de Seversky Center? 10:56:35
 11 A. Yes.
 12 Q. Anything else that falls under the
 13 executive chef job duties?
 14 A. Scheduling the culinary staff,
 15 sanitation. 10:56:45
 16 Q. What do you mean by sanitation?
 17 A. Ensuring that the food is handled
 18 properly, received properly, kitchens are cleaned.
 19 Q. And do you know what your salary was
 20 when you came back to the de Seversky Center in 10:57:04
 21 1993?
 22 A. I believe it was around 80,000.
 23 Q. And do you recall whom you reported to
 24 when you came back to NYIT in 1993?
 25 A. I believe it was Michael Thorn I 10:57:29

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1 R. Rizzuto
 2 think.
 3 Q. Did you know what his job title was?
 4 A. General manager.
 5 Q. Of the de Seversky Center? 10:57:42
 6 A. Yes.
 7 Q. So you reported to him?
 8 A. Yes.
 9 Q. And what -- as the general manager
 10 what type of supervision did he exercise over you 10:57:52
 11 as executive chef?
 12 A. I reported to him.
 13 Q. Were there certain things that you
 14 needed his approval on?
 15 A. Yes. 10:58:02
 16 Q. Like what?
 17 A. Menus, purchasing.
 18 Q. Now what do you mean when you say you
 19 needed his approval for menus or purchasing?
 20 A. If we had a wine dinner or he was 10:58:23
 21 doing any kind of special events he would want to
 22 see the menu. He knew a lot about wines so he
 23 would pair up wines with it. Purchasing. He
 24 really wanted to see any larger purchases because
 25 we had a budget that we were accountable to. 10:58:37

1 R. Rizzuto
 2 Q. But did you have -- was he
 3 responsible -- did he approve all expenses?
 4 A. No.
 5 Q. Only larger expenses? 10:58:45
 6 A. Yes.
 7 Q. And do you know what his, Mr. Thorn's
 8 responsibilities were as general manager at the
 9 time that you reported to him when you were
 10 executive chef? 10:59:09
 11 A. I guess as an overview he was
 12 responsible for everything that had to deal with
 13 the de Seversky Center.
 14 Q. Did he have any involvement in the
 15 day-to-day operations? 10:59:21
 16 A. Yes.
 17 Q. In the day-to-day operations of the
 18 dining room?
 19 A. Yes.
 20 Q. And what was his involvement in the 10:59:27
 21 day to day operations at the time that you were
 22 executive chef?
 23 A. Budgeting, dining room operation. He
 24 was -- he had a lot of knowledge with regards to
 25 the dining room. He scheduled the dining room 10:59:46

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1 R. Rizzuto
 2 staff at the time.
 3 Q. What about running events, would he be
 4 present for events?
 5 A. Most, but not all. 10:59:54
 6 Q. And if he was present was he in charge
 7 of running the event?
 8 A. You know I don't remember whether
 9 there was a maitre d' at the time. There might
 10 have been. The maitre d' would have been in 11:00:09
 11 charge of the event, but he would be in charge of
 12 -- his responsibility is to make sure that
 13 everything, whether it be the food, the service
 14 was -- that was under his responsibilities to
 15 account to. 11:00:20
 16 Q. If there wasn't a maitre d' at the
 17 time, would he have been responsible for filling
 18 in that role?
 19 A. Yes.
 20 Q. What -- strike that. 11:00:29
 21 Following your position as executive
 22 chef, what was the next position that you held at
 23 NYIT.
 24 A. General manager.
 25 Q. And did you hold dual role in that 11:00:46

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<p style="text-align: right;">Page 58</p> <p>1 R. Rizzuto</p> <p>2 position or were you just solely acting as general</p> <p>3 manager?</p> <p>4 A. I held a dual role for a period of</p> <p>5 time while I tried to replace myself as executive 11:00:59</p> <p>6 chef.</p> <p>7 Q. And were you able to replace yourself</p> <p>8 as executive chef?</p> <p>9 A. Yes.</p> <p>10 Q. And at that point you took on just the 11:01:08</p> <p>11 general manager duties?</p> <p>12 A. Yes.</p> <p>13 Q. You performed just the general</p> <p>14 manager -- you weren't performing as the executive</p> <p>15 chef anymore? 11:01:20</p> <p>16 A. No.</p> <p>17 Q. So going forward you were just the GM,</p> <p>18 the general manager?</p> <p>19 A. Yes.</p> <p>20 Q. And what were your job duties as 11:01:28</p> <p>21 general manager?</p> <p>22 A. Budget, payroll, ensuring that the</p> <p>23 grounds were kept up, the inside maintenance of</p> <p>24 the building was kept up. My responsibility was</p> <p>25 to the whole operation even though we had an 11:01:50</p>	<p style="text-align: right;">Page 60</p> <p>1 R. Rizzuto</p> <p>2 Q. Now you had said one of your</p> <p>3 responsibilities was payroll.</p> <p>4 What were your responsibilities with</p> <p>5 respect to payroll? 11:03:19</p> <p>6 A. To ensure that the payroll would be</p> <p>7 processed to the payroll department at week's end.</p> <p>8 Q. And what did that involve? Did you</p> <p>9 physically go through, put the spreadsheets</p> <p>10 together in payroll or did someone put that 11:03:40</p> <p>11 together for you and you just reviewed it?</p> <p>12 A. I don't recall at that time.</p> <p>13 Q. Did it vary during the time that you</p> <p>14 were a general manager?</p> <p>15 A. Vary as far as what? 11:03:51</p> <p>16 Q. Did it change in any way? In some</p> <p>17 cases you were putting the spreadsheets together</p> <p>18 and in other cases you had someone prepare it for</p> <p>19 you?</p> <p>20 A. I don't recall that I did have anybody 11:04:02</p> <p>21 prepare. What I'm saying is I don't recall what</p> <p>22 my process was in the beginning.</p> <p>23 Q. Do you recall what it was during the</p> <p>24 end of your tenure as general manager?</p> <p>25 A. Yes. I created this system of payroll 11:04:12</p>
<p style="text-align: right;">Page 59</p> <p>1 R. Rizzuto</p> <p>2 executive chef he still reported to me. I was</p> <p>3 responsible for the culinary as well.</p> <p>4 Q. What was your responsibility with</p> <p>5 respect to budget as the GM? 11:02:07</p> <p>6 A. We would have to create a budget and</p> <p>7 be accountable to that budget by the end of the</p> <p>8 fiscal year.</p> <p>9 Q. And during the time period when you</p> <p>10 first started as general manager, whom did you 11:02:27</p> <p>11 report to?</p> <p>12 A. First it was the president of the</p> <p>13 college Dr. Edward Guiliano.</p> <p>14 Q. And then did that change at any point?</p> <p>15 A. Yes. 11:02:50</p> <p>16 Q. And who did you report to after Dr.</p> <p>17 Guiliano?</p> <p>18 A. Len Aubrey.</p> <p>19 Q. And what was Len Aubrey's title?</p> <p>20 A. CFO. 11:02:58</p> <p>21 Q. During the time that you since --</p> <p>22 during the time that you were general manager did</p> <p>23 you report to anyone other than Dr. Guiliano or</p> <p>24 Len Aubrey?</p> <p>25 A. No. 11:03:10</p>	<p style="text-align: right;">Page 61</p> <p>1 R. Rizzuto</p> <p>2 projecting, taking the revenue that was projected</p> <p>3 for, say next week Monday through Sunday, taking</p> <p>4 the salaries and then there is a formula that you</p> <p>5 put together that you would have to come out with 11:04:24</p> <p>6 a certain number to control the payroll.</p> <p>7 Q. And how did you create that?</p> <p>8 A. What do you mean by how?</p> <p>9 Q. You said you created a system of</p> <p>10 payroll projection. 11:04:38</p> <p>11 A. Right.</p> <p>12 Q. Other than what you just -- is there</p> <p>13 anything other than what you just discussed as to</p> <p>14 what went into that?</p> <p>15 A. Not really. 11:04:43</p> <p>16 Q. So you would look at the revenue that</p> <p>17 was going to be coming in for the next week?</p> <p>18 A. Yes.</p> <p>19 Q. And what affect did that have on the</p> <p>20 payroll? 11:04:53</p> <p>21 A. Well, we take the salaries from</p> <p>22 everybody in the building and we would look at</p> <p>23 their hours and we multiply the hours by their</p> <p>24 salaries and when it came out into the spreadsheet</p> <p>25 we would take the total number with benefits, 11:05:05</p>

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1 R. Rizzuto
 2 because we get charged for our benefits as well,
 3 and we work it in against that revenue number. If
 4 the revenue number was too high -- I am sorry. If
 5 the payroll number, the projection was too high, 11:05:18
 6 the percentage for payroll, then we would start
 7 looking at where we would might cut back if we
 8 could.
 9 Q. And this is just on a weekly basis;
 10 right? 11:05:30
 11 A. Yes.
 12 Q. So how could you cut back? If we are
 13 talking week to week, how would you cut back?
 14 A. Well, we would be able to cut back on
 15 part time staff not full time because full time 11:05:38
 16 have a set number that they are being paid.
 17 Q. So if the payroll is exceeding the
 18 revenue you try to cut back on the part-time
 19 staff?
 20 A. Yes. 11:05:51
 21 Q. Now you had also mentioned maintenance
 22 of the de Seversky Center and responsibility over
 23 the grounds as GM.
 24 What did that involve?
 25 A. The system of putting in requests to 11:06:09

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1 R. Rizzuto
 2 our facilities department through a system that
 3 they receive and if we needed weeds pulled or we
 4 needed the grass -- if they weren't maintaining
 5 the grass on a weekly basis we would send a 11:06:22
 6 facilitator's request in and say could you please
 7 get the grass cut we have an event coming up.
 8 Inside a house if something went wrong with the
 9 plumbing, we would put a request in to the plumber
 10 to come and look at it. Things like that. 11:06:33
 11 Q. Now with respect to culinary, what was
 12 your responsibilities in that regard?
 13 A. Since I had knowledge of culinary and
 14 that's where I started the -- I would have some
 15 say on what the menus would be or also the 11:06:52
 16 sanitation. Same thing.
 17 Q. But was it less hands on than when you
 18 were executive chef?
 19 A. Yes.
 20 Q. Now as GM did you have any 11:07:05
 21 responsibility for dining room operations?
 22 A. Well, I was responsible for the dining
 23 room operations, but I would have somebody that
 24 was in charge of the dining room.
 25 Q. And who would that be? 11:07:17

1 R. Rizzuto
 2 A. I would delegate it.
 3 Q. A job title not a specific name.
 4 A. Maitre d' at that time I think it was
 5 if I recall. 11:07:25
 6 Q. What were the maitre d's
 7 responsibilities?
 8 A. The maitre d's responsibilities had to
 9 do with everything that concerned the dining room
 10 whether it be setups, its scheduling I believe at 11:07:38
 11 the time of the staff and typical daily every day
 12 dining room thing.
 13 Q. And was the maitre d' the person in
 14 charge of the dining room, was there anyone else
 15 considered supervisor or management within the 11:08:00
 16 dining room operations?
 17 A. At that time I don't recall exactly,
 18 but I believe it was just the maitre d'.
 19 Q. And during the time that you were a GM
 20 did you always have -- was the maitre d' position 11:08:14
 21 always filled?
 22 A. I don't recall.
 23 Q. And who would cover the maitre d'
 24 responsibilities as the maitre d' if there was no
 25 maitre d'? 11:08:24

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1 R. Rizzuto
 2 A. Then we must have had a maitre d'
 3 because it was never me.
 4 Q. But if there hadn't been a maitre d',
 5 it would have fallen on you as the GM? 11:08:39
 6 A. Yes.
 7 Q. But you don't recall there ever being
 8 circumstances where there was no maitre d'?
 9 A. I don't recall that there wasn't,
 10 yeah. 11:08:51
 11 Q. Because you never performed the maitre
 12 d' function during the time you were a GM?
 13 A. Correct.
 14 Q. Now what's your -- strike that.
 15 I believe you said your current 11:09:07
 16 position is Director of Dining Services?
 17 A. Yes.
 18 Q. And when did you take on that
 19 position?
 20 A. Approximately, 2004. 11:09:19
 21 Q. So do you know how long you filled the
 22 GM position?
 23 A. I don't recall the exact amount of
 24 time.
 25 Q. But it would have been up until 2004? 11:09:41

17 (Pages 62 to 65)

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<p style="text-align: right;">Page 66</p> <p>1 R. Rizzuto</p> <p>2 A. Yes, and then some.</p> <p>3 Q. What do you mean and then some?</p> <p>4 A. We -- at that point the Director of</p> <p>5 Dining Services we were starting to -- we took 11:09:59</p> <p>6 over the food service area of the college and</p> <p>7 that's hence where my title Director of Dining</p> <p>8 Services came in and at the time I was trying to</p> <p>9 interview for a general manager to take my place</p> <p>10 as doing that at the de Seversky Center. 11:10:12</p> <p>11 Q. And at some point was one hired?</p> <p>12 A. Yes.</p> <p>13 Q. And who was hired to be the GM?</p> <p>14 A. Anthony.</p> <p>15 Q. Was there any GM between you filling 11:10:23</p> <p>16 that position and Mr. Baffo filling that position?</p> <p>17 A. No.</p> <p>18 Q. Do you recall when Mr. Baffo was</p> <p>19 hired?</p> <p>20 A. The exact date, year, no. 11:10:33</p> <p>21 Q. Do you recall the year?</p> <p>22 A. No.</p> <p>23 Q. Do you know if it was 2006?</p> <p>24 A. To be honest, I don't remember exactly</p> <p>25 when. 11:10:45</p>	<p style="text-align: right;">Page 68</p> <p>1 R. Rizzuto</p> <p>2 Q. Was it weeks, months, years?</p> <p>3 A. I can't give you an honest -- even an</p> <p>4 approximation.</p> <p>5 Q. Now how did it come about that you 11:12:01</p> <p>6 were promoted to the Director of Dining Services</p> <p>7 position?</p> <p>8 A. I -- Len Aubrey started around the --</p> <p>9 that time, I don't remember the year, and at that</p> <p>10 time I thought to myself on many occasions I did 11:12:17</p> <p>11 we should be running the food service as well for</p> <p>12 a few reasons. We had the capabilities on campus</p> <p>13 to do it and also the company that was in there</p> <p>14 was not doing a good job. So I went to Mr. Aubrey</p> <p>15 on a few -- I don't remember if it was initial 11:12:37</p> <p>16 meetings when he first started and said, what do</p> <p>17 you think about us taking over the food service</p> <p>18 and he said to me well, he said I was going to</p> <p>19 talk to you about that because when I came in for</p> <p>20 my interview I came in with my wife and we ate at 11:12:49</p> <p>21 one of the areas and my wife said you really have</p> <p>22 to do something about this food it is terrible.</p> <p>23 He told me to put a business plan</p> <p>24 together which I did.</p> <p>25 Q. And then from that that evolved into 11:13:01</p>
<p style="text-align: right;">Page 67</p> <p>1 R. Rizzuto</p> <p>2 Q. Would you disagree with me if I told</p> <p>3 you it was 2006?</p> <p>4 A. If you had paperwork that stated that</p> <p>5 I would agree with you. 11:10:52</p> <p>6 Q. And does that refresh your</p> <p>7 recollection as to when you -- whether or not you</p> <p>8 took on the Director of Dining Room Services</p> <p>9 position in 2004?</p> <p>10 A. I would love to say I know the exact 11:11:09</p> <p>11 year, but to be honest with you I don't.</p> <p>12 Q. During the time period between you</p> <p>13 getting the promotion to -- and it was a</p> <p>14 promotion; correct?</p> <p>15 A. Yes. 11:11:23</p> <p>16 Q. During the time period between when</p> <p>17 you got the promotion to Director of Dining</p> <p>18 Services and Mr. Baffo was hired as general</p> <p>19 manager, who performed the general manager</p> <p>20 function? 11:11:32</p> <p>21 A. I did.</p> <p>22 Q. And do you have any recollection as to</p> <p>23 how long you performed the, both the Director of</p> <p>24 Dining Services and the general manager position?</p> <p>25 A. Not exactly, no. 11:11:42</p>	<p style="text-align: right;">Page 69</p> <p>1 R. Rizzuto</p> <p>2 you taking on the Director of Dining Room Services</p> <p>3 role?</p> <p>4 A. Yes.</p> <p>5 Q. When you started, what was your salary 11:13:08</p> <p>6 as Director of Dining Room Services?</p> <p>7 A. I don't remember my exact salary. I</p> <p>8 think it was in the 105, to 110,000 range.</p> <p>9 Q. Do you know what it is currently?</p> <p>10 A. Yes. 11:13:29</p> <p>11 Q. What is it?</p> <p>12 A. 129,000.</p> <p>13 Q. And do you recall what your salary was</p> <p>14 as GM, as general manager of the de Seversky</p> <p>15 Center? 11:13:44</p> <p>16 A. I think approximately 80, 85,000.</p> <p>17 Q. And as Director of Dining Services,</p> <p>18 whom do you report to?</p> <p>19 A. Len Aubrey.</p> <p>20 Q. And what do your job responsibilities 11:14:07</p> <p>21 as Director of Dining Services include?</p> <p>22 A. All -- at that point there was only</p> <p>23 one operation that we were operating. It was a</p> <p>24 medical school. It didn't -- my umbrella didn't</p> <p>25 come under the other areas until later on. 11:14:27</p>

18 (Pages 66 to 69)

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1 R. Rizzuto

2 Q. Now going back we talked about the
3 time period when you were taking on the general
4 manager position.

5 Did you ever ask Mr. Baffo for advice 11:45:34
6 about serving in that, in a general manager
7 position --

8 A. Yes.

9 Q. -- at a food service establishment?

10 A. Yes. 11:45:42

11 Q. And what did you discuss with him?

12 A. We discussed financials. Went to Papa
13 Razzi one day and asked him to show me how he
14 handled food cost and payroll projections and
15 things like that. 11:46:00

16 Q. And did you find his advice helpful?

17 A. Yes.

18 Q. And did you take that advice when you
19 took on the general manager functions at de
20 Seversky Center? 11:46:08

21 A. Yes.

22 Q. And after you took the role of general
23 manager at de Seversky Center did you have any
24 other discussions with Mr. Baffo about him taking
25 on a role at the de Seversky Center? 11:46:23

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1 R. Rizzuto

2 A. Maybe.

3 Q. Did you ever discuss him coming and
4 working for you at the de Seversky Center?

5 A. I think what I did was let him know 11:46:43
6 that the position was becoming available.

7 Q. But other than that did you ever
8 discuss with him you being the supervisor at the
9 de Seversky Center?

10 A. Yes. 11:46:55

11 Q. And what did you discuss with him
12 about him potentially working at the de Seversky
13 Center?

14 A. I discussed with him -- we sat in the
15 dining room. I remember that very clearly and I 11:47:08
16 said to him, if you are going to be successful
17 here as general manager you are going to have to
18 grow some balls.

19 Q. And this was in the dining room at
20 Papa Razzi or the de Seversky Center? 11:47:23

21 A. De Seversky.

22 Q. So this was after you had told him
23 about the position was open?

24 A. Yes.

25 Q. And why did you tell him that he 11:47:29

1 R. Rizzuto

2 needed to grow some balls?

3 A. Because he is too soft.

4 Q. And what about that management ability
5 -- strike that. 11:47:47

6 How does that relate to the general
7 manager position?

8 A. There has to be clear direction for
9 the staff. Staff can't just be thrown into a
10 situation. There has to be a clear expectations, 11:48:03
11 goals and then if the goals are being met
12 wonderful, if they are not there has to be some
13 action whether the action be that we help them to
14 reach the goals and if they can't at some point
15 you have to take some kind of action. 11:48:23

16 Q. Now before Mr. Baffo became employed
17 at the de Seversky Center -- well, strike that.

18 There came a time when the general
19 manager position was then open at the de Seversky
20 Center? 11:48:48

21 A. Yes.

22 Q. And that is because you got the
23 promotion to the Director of Dining Services?

24 A. Yes.

25 Q. And at that point you discussed with 11:48:54

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1 R. Rizzuto

2 Mr. Baffo and told him that the position was open?

3 A. Yes.

4 Q. Was this position advertised or posted
5 anywhere? 11:49:05

6 A. I believe it was.

7 Q. And do you know whether or not Mr.
8 Baffo submitted an application for it?

9 A. Yes.

10 Q. And do you know whether or not anyone 11:49:15
11 else submitted an application?

12 A. I don't recall.

13 Q. Do you recall any of the interviews
14 for the position?

15 A. I don't. 11:49:24

16 Q. But you recall Mr. Baffo's interview?

17 A. Yes.

18 Q. And was that the same meeting with him
19 that you discussed in the dining room at the de
20 Seversky Center? 11:49:36

21 A. I believe it was.

22 Q. Do you recall any other interviews
23 that Mr. Baffo had in connection with the
24 application for the general manager position?

25 A. With me? 11:49:46

24 (Pages 90 to 93)

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<p style="text-align: right;">Page 110</p> <p>1 R. Rizzuto</p> <p>2 multi-page document Bates stamped D 07277 to D</p> <p>3 07306. We are going to go through it so I just</p> <p>4 want you to review it generally. You see it is</p> <p>5 titled Affidavit of Robert J. Rizzuto? 12:10:48</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall having seen this</p> <p>8 document before?</p> <p>9 A. Yes.</p> <p>10 Q. And did you prepare this document? 12:10:55</p> <p>11 A. Indirectly.</p> <p>12 Q. What do you mean when you say</p> <p>13 indirectly?</p> <p>14 A. I believe I sat with Stephen Kloepfer</p> <p>15 and we went through it. 12:11:08</p> <p>16 Q. And is this -- do you know if this</p> <p>17 affidavit was submitted to the New York State</p> <p>18 Division of Human Rights?</p> <p>19 A. I did not know that.</p> <p>20 Q. But is that what it says at the top 12:11:21</p> <p>21 left?</p> <p>22 A. At time I didn't know it.</p> <p>23 Q. And your signature is found on page 5</p> <p>24 of this document?</p> <p>25 A. Yes. 12:11:31</p>	<p style="text-align: right;">Page 112</p> <p>1 R. Rizzuto</p> <p>2 Q. It started on or about September 25,</p> <p>3 2006?</p> <p>4 A. Yes.</p> <p>5 Q. And when Mr. Baffo first joined the de 12:12:27</p> <p>6 Seversky Center, what was your opinion of his work</p> <p>7 performance?</p> <p>8 A. It was okay.</p> <p>9 Q. What do you mean when you say it was</p> <p>10 okay? 12:13:14</p> <p>11 A. I am trying to think how to explain</p> <p>12 it. It was...</p> <p>13 Q. Would you have considered it</p> <p>14 satisfactory?</p> <p>15 A. Yes. 12:13:37</p> <p>16 Q. And during what period of time did you</p> <p>17 consider his work performance to be satisfactory?</p> <p>18 A. Exact time frames I don't recall, but</p> <p>19 when he first started maybe in his first year.</p> <p>20 Q. And then at some point in your opinion 12:13:55</p> <p>21 his work performance changed?</p> <p>22 A. Yes.</p> <p>23 Q. And why was that?</p> <p>24 A. We tried to initiate -- we initiated a</p> <p>25 program of developing our staff and I had gone 12:14:08</p>
<p style="text-align: right;">Page 111</p> <p>1 R. Rizzuto</p> <p>2 Q. And did you review this document</p> <p>3 before you signed it?</p> <p>4 A. Yes.</p> <p>5 Q. And was everything included in this 12:11:38</p> <p>6 document true and correct?</p> <p>7 A. Yes.</p> <p>8 Q. As true and correct as your testimony</p> <p>9 is today?</p> <p>10 A. Yes. 12:11:47</p> <p>11 Q. Because you understood at the time you</p> <p>12 signed it that this was testimony under oath?</p> <p>13 A. Yes.</p> <p>14 Q. And you were careful to review it and</p> <p>15 make sure everything was accurate? 12:11:58</p> <p>16 A. Yes.</p> <p>17 Q. Now turning to paragraph 3 you see it</p> <p>18 says: "Anthony Baffo joined NYIT on September 25,</p> <p>19 2006 with the title general manager de Seversky</p> <p>20 Center." 12:12:11</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Does that refresh your recollection as</p> <p>24 to when Mr. Baffo's employment with NYIT started?</p> <p>25 A. Yes. 12:12:21</p>	<p style="text-align: right;">Page 113</p> <p>1 R. Rizzuto</p> <p>2 away to a conference and I was enlightened by this</p> <p>3 conference. It was a leadership conference and I</p> <p>4 came back and says I want to start developing a</p> <p>5 staff and write expectations for them, give them 12:14:27</p> <p>6 clear direction and try to help them and I guess</p> <p>7 it began with that process, that there was a --</p> <p>8 challenges in being able to do that with the staff</p> <p>9 to begin with.</p> <p>10 Q. And what do you mean there were 12:14:49</p> <p>11 challenges?</p> <p>12 A. It really went back to the whole</p> <p>13 accountability issue of giving clear direction and</p> <p>14 holding staff accountable to what their positions</p> <p>15 entailed. 12:15:04</p> <p>16 Q. Now I wanted to direct your attention</p> <p>17 to paragraph 7 of your affidavit.</p> <p>18 A. Yes.</p> <p>19 Q. Where it says: "For the past two</p> <p>20 years Anthony Baffo's performance as de Seversky 12:15:26</p> <p>21 general manager was unsatisfactory. In fiscal</p> <p>22 2008 I gave Anthony control over the de Seversky</p> <p>23 Center budget and the center severed a \$600,000</p> <p>24 loss in that year. In fiscal 2009 I took back</p> <p>25 budget control from Anthony and managed the 12:15:44</p>

29 (Pages 110 to 113)

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1 R. Rizzuto
 2 operation to a \$650,000 profit."
 3 Do you see that?
 4 A. Yes.
 5 Q. I just wanted to direct your attention 12:15:51
 6 first to fiscal 2008 and at the start of fiscal
 7 2008 did Mr. -- you indicate you gave Mr. Baffo
 8 control over the budget?
 9 A. Yes.
 10 Q. And what did that entail? 12:16:04
 11 A. I wasn't as much as micromanaging the
 12 building with having to approve requisitioning and
 13 purchases and payroll and things like that. I
 14 thought it would be time to give that, that's what
 15 his position entailed. He was supposed to be 12:16:23
 16 doing that and reporting to me that the numbers
 17 were always good and I kind of gave some of my
 18 responsibilities off to him.
 19 Q. And so what control did Mr. Baffo have
 20 over the budget then? 12:16:43
 21 A. Well, he would have -- he would
 22 purchase -- if he wanted to purchase things no
 23 problem. I just didn't micromanage it as much.
 24 Didn't have to be everything approved by me.
 25 Q. And as general manager would he 12:17:00

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1 R. Rizzuto
 2 ultimately be required to approve any expenses?
 3 A. Yes.
 4 Q. And certain expenses would also
 5 require your approval? 12:17:12
 6 A. Yes.
 7 Q. But he would have discretion to work
 8 within a certain level, he had discretion to
 9 approve expenses; correct?
 10 A. Yes. 12:17:21
 11 Q. What about the executive chef, did the
 12 executive chef have any control over purchasing at
 13 that time?
 14 A. Yes.
 15 Q. And what type of control did the 12:17:26
 16 executive chef have over purchasing?
 17 A. The executive chef would have to
 18 purchase per menu, culinary menu needs. That was
 19 most of what happened in the kitchen. That's
 20 where most of the purchasing went on is for food. 12:17:46
 21 Q. And that's similar when you were in
 22 the -- you talked a little bit earlier about when
 23 you were in the executive chef role and that you
 24 had discretion to purchase certain things within
 25 reason, that you didn't necessarily need approval 12:17:58

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1 R. Rizzuto
 2 for all the expenditures?
 3 A. Yes.
 4 Q. So it was consistent from that time
 5 period you discussed earlier it was the same as 12:18:05
 6 what we are talking about now; is that fair to
 7 say?
 8 A. Yes.
 9 Q. Now you indicate that for fiscal 2008
 10 the de Seversky Center suffered a \$600,000 loss. 12:18:17
 11 Now did you attribute that loss to Mr.
 12 Baffo's control of the budget?
 13 A. Yes.
 14 Q. And why is that?
 15 A. Because he as general manager you are 12:18:29
 16 expected to watch as you go along during the year
 17 and watch your finances at the end of each month,
 18 react to any problems that you may have seen or
 19 maybe over expenditures and as I said, I wasn't
 20 micromanaging at the time. 12:18:54
 21 Q. And -- strike that.
 22 Did you have any understanding as to
 23 what role the economy may have played in the de
 24 Seversky Center suffering a loss for fiscal 2008.
 25 A. It is our jobs to foresee things and 12:19:17

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1 R. Rizzuto
 2 react to them.
 3 Q. So regardless of what was going on in
 4 the economy you expected that there wouldn't be a
 5 loss at the de Seversky Center; correct? 12:19:27
 6 A. Yes.
 7 Q. And similarly for fiscal 2009 you
 8 indicate you took back budget control from Anthony
 9 and managed the operation to a \$650,000 profit?
 10 A. Yes. 12:19:40
 11 Q. And do you attribute that profit to
 12 your management?
 13 A. I would.
 14 Q. And why is that?
 15 A. My gift, if you call it, is to be able 12:19:52
 16 to go into operations and turn them around. I
 17 have done that all my career. In every one of the
 18 jobs that I've held I've turned operations around
 19 financially. It doesn't always mean top line. It
 20 doesn't always mean that the top line is growing, 12:20:08
 21 but the bottom has always grown, the revenue.
 22 Q. What do you mean, could you clarify
 23 what you mean by doesn't always mean that the top
 24 line has grown?
 25 A. The economy may have a lot to do with 12:20:20

30 (Pages 114 to 117)

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<p>1 R. Rizzuto</p> <p>2 A. I believe documents Neil may have</p> <p>3 showed me may have said that it increased.</p> <p>4 Q. So the revenue increased during the</p> <p>5 year that Mr. Baffo had control over the budget? 12:25:18</p> <p>6 A. Yes. If that's what the documentation</p> <p>7 says.</p> <p>8 Q. What about from fiscal 2008 to 2009,</p> <p>9 do you have any understanding as to whether or not</p> <p>10 there was any change in revenue? 12:25:35</p> <p>11 A. I believe we always had some growth.</p> <p>12 MR. FILOSA: Mark this as Exhibit 3.</p> <p>13 (Rizzuto Exhibit 3, P&L for fiscal</p> <p>14 2006 through 2010, marked for identification,</p> <p>15 as of this date.) 12:26:26</p> <p>16 Q. You have been shown a document that's</p> <p>17 been marked as Rizzuto Exhibit 3.</p> <p>18 Do you recognize this document?</p> <p>19 A. This is a document I believe Neil</p> <p>20 showed me. 12:26:35</p> <p>21 Q. So this is a document you reviewed</p> <p>22 with your attorney prior to today's deposition?</p> <p>23 MR. SPARBER: I can't answer.</p> <p>24 A. I know, but I am trying to remember</p> <p>25 when I saw it. I don't recall exactly when I saw 12:26:49</p>	<p>1 R. Rizzuto</p> <p>2 from, it is not anything that I created. It was</p> <p>3 provided by your attorney.</p> <p>4 A. Sure.</p> <p>5 Q. Now looking at the column for 2008; do 12:27:53</p> <p>6 you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And is this -- this is a profit and</p> <p>9 loss statement.</p> <p>10 So it would show whether or not the de 12:28:00</p> <p>11 Seversky Center suffered a profit or loss for a</p> <p>12 particular year; correct?</p> <p>13 A. Yes.</p> <p>14 Q. And referring to fiscal year 2008 it</p> <p>15 shows a profit of 150,000; correct? 12:28:08</p> <p>16 A. Yes.</p> <p>17 Q. So going back to your affidavit you</p> <p>18 had indicated that the de Seversky Center suffered</p> <p>19 a \$600,000 loss for 2008?</p> <p>20 A. Yes. 12:28:20</p> <p>21 Q. So I am just wondering how to</p> <p>22 reconcile these two numbers?</p> <p>23 A. I don't know.</p> <p>24 Q. So do you know what you were referring</p> <p>25 to when you said that the de Seversky Center 12:28:27</p>
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<p>1 R. Rizzuto</p> <p>2 it.</p> <p>3 Q. What do you believe this to be?</p> <p>4 A. This is a P&L, a basic P -- just the</p> <p>5 bottom line numbers. P&L for fiscal 2006 through 12:27:05</p> <p>6 2010.</p> <p>7 Q. And when you say P&L you are referring</p> <p>8 to a profit and loss statement?</p> <p>9 A. Yes.</p> <p>10 Q. And do you believe that these numbers 12:27:15</p> <p>11 are accurate?</p> <p>12 A. I would believe that they are.</p> <p>13 Q. And do you know whether or not the de</p> <p>14 Seversky Center maintains records like these?</p> <p>15 A. Yes. 12:27:27</p> <p>16 Q. Reflecting profit and loss for the</p> <p>17 particular years?</p> <p>18 A. Yes.</p> <p>19 Q. And this document was actually</p> <p>20 produced by your attorney as well, do you know 12:27:35</p> <p>21 that?</p> <p>22 A. That might have been where I saw with</p> <p>23 Steven.</p> <p>24 Q. I can tell you it was produced to us</p> <p>25 by your attorney. Just so you know where it came 12:27:44</p>	<p>1 R. Rizzuto</p> <p>2 suffered a \$600,000 loss?</p> <p>3 A. It was definitely a documentation that</p> <p>4 was produced in accounting that I had.</p> <p>5 Q. But you don't know what document that 12:28:35</p> <p>6 was?</p> <p>7 A. Off the top of my head, no.</p> <p>8 Q. And it certainly wasn't this document;</p> <p>9 correct?</p> <p>10 A. No. 12:28:42</p> <p>11 Q. Because this document shows there was</p> <p>12 a \$150,000 profit for that year; correct?</p> <p>13 A. Yes.</p> <p>14 Q. What other documents are you aware of</p> <p>15 that would show what the profit or loss was for a 12:28:50</p> <p>16 particular year?</p> <p>17 A. We receive -- there is two reports</p> <p>18 that are driven. I always have gone to accounting</p> <p>19 to get a report at the end of the month and they</p> <p>20 would produce this report and then budget produced 12:29:08</p> <p>21 a different report. I always would go by the one</p> <p>22 that accounting gave me and that was my</p> <p>23 understanding of the one that accounting gave me</p> <p>24 was a loss of 600,000 for that particular year.</p> <p>25 Q. And do you currently still have those 12:29:25</p>

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<p>1 R. Rizzuto</p> <p>2 records?</p> <p>3 A. No.</p> <p>4 Q. Do you know who would?</p> <p>5 A. No. Probably could be produced by 12:29:31</p> <p>6 accounting, but I never kept hard copies of them.</p> <p>7 Q. And I am just trying to get an</p> <p>8 understanding as to where the \$600,000 number came</p> <p>9 from so we can assist your attorneys in finding it</p> <p>10 so it could be produced to us. 12:29:46</p> <p>11 Where would -- who would you -- strike</p> <p>12 that.</p> <p>13 The \$600,000 number, where do you</p> <p>14 believe you got it so that you could put it in</p> <p>15 this affidavit? 12:29:55</p> <p>16 A. From accounting.</p> <p>17 Q. And was this based on a yearly</p> <p>18 document or a monthly document?</p> <p>19 A. That particular one would have been an</p> <p>20 annual one. 12:30:07</p> <p>21 RQ MR. FILOSA: We are going to call for</p> <p>22 the production of whatever document it is</p> <p>23 that Mr. Rizzuto was referring to in this</p> <p>24 instance or any documents referring to</p> <p>25 profits or losses for the de Seversky Center 12:30:21</p>	<p>1 R. Rizzuto</p> <p>2 Q. Now looking at -- going back to what</p> <p>3 has been marked as Rizzuto Exhibit 3, if you look</p> <p>4 at fiscal year 2006; correct?</p> <p>5 A. Yes. 12:31:28</p> <p>6 Q. And that was the year that Mr. Baffo</p> <p>7 would have been hired just after the end of fiscal</p> <p>8 year 2006?</p> <p>9 A. Yes.</p> <p>10 Q. Because he was hired in September of 12:31:36</p> <p>11 2006, so that would have been within the first</p> <p>12 month of fiscal year 2007?</p> <p>13 A. Yes.</p> <p>14 Q. You see that, and comparing '06 to '07</p> <p>15 you see revenue from the de Seversky Center 12:31:49</p> <p>16 increased that year; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And what do you attribute that</p> <p>19 increase to?</p> <p>20 A. Growth. Typical annual growth. The 12:31:57</p> <p>21 grounds. A lot of work got done on the grounds.</p> <p>22 The mansion was in pretty much bad shape before</p> <p>23 Anthony came and then we started to do a lot of</p> <p>24 work on the mansion itself. The grounds were a</p> <p>25 big part of it. We lost a lot of business and 12:32:12</p>
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<p>1 R. Rizzuto</p> <p>2 for fiscal year 2008, but really 2006</p> <p>3 through 2010 and we will obviously follow up</p> <p>4 in writing on that.</p> <p>5 Q. Going on you state in your affidavit 12:30:35</p> <p>6 that in fiscal 2009 you took back budget control</p> <p>7 and managed the operation to a \$650,000 profit;</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>10 Q. And if you look at this chart for 12:30:45</p> <p>11 fiscal year 2009 you will see it appears to be a</p> <p>12 profit of about \$625,000; correct?</p> <p>13 A. Yes.</p> <p>14 Q. So is that what you are referring to</p> <p>15 in this part of your affidavit? 12:30:57</p> <p>16 A. Yes.</p> <p>17 Q. So in this paragraph of your affidavit</p> <p>18 the number matches up for 2009, but it doesn't for</p> <p>19 2008; correct?</p> <p>20 A. Yes. 12:31:08</p> <p>21 Q. Do you have any explanation for that?</p> <p>22 A. No.</p> <p>23 Q. I am just trying to get an</p> <p>24 understanding how there can be a discrepancy.</p> <p>25 A. No. 12:31:16</p>	<p>1 R. Rizzuto</p> <p>2 people would come in and walk through and they</p> <p>3 would say you got to get the grounds fixed up.</p> <p>4 So we did a lot of improvements on the</p> <p>5 building which helped. 12:32:22</p> <p>6 Q. And you also see expenses also</p> <p>7 increased from '06 to '07; correct?</p> <p>8 A. Yes.</p> <p>9 Q. Such that profit actually during that</p> <p>10 year decreased from 452,000 to only 108,000? 12:32:31</p> <p>11 A. Yes.</p> <p>12 Q. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Now starting fiscal year 2008, is that</p> <p>15 the year that Mr. Baffo had control over the 12:32:41</p> <p>16 budget?</p> <p>17 A. Yes.</p> <p>18 Q. And if you compare 2007 to 2008 you</p> <p>19 see that revenue increased from year to year?</p> <p>20 A. Yes. 12:32:54</p> <p>21 Q. Do you see that?</p> <p>22 A. Mm-hmm.</p> <p>23 Q. And it was an increase of slightly</p> <p>24 more than \$300,000; would you agree with that?</p> <p>25 A. Yes. 12:33:03</p>

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<p>1 R. Rizzuto</p> <p>2 Q. Similarly expenses increased as well;</p> <p>3 do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. But if you look at the profit, you 12:33:08</p> <p>6 compare the profit which is the net direct</p> <p>7 contribution that's profit; right? You got to</p> <p>8 answer.</p> <p>9 Is that a yes?</p> <p>10 A. Yes. 12:33:18</p> <p>11 Q. So the net direct contribution is</p> <p>12 profit; correct?</p> <p>13 A. Yes.</p> <p>14 Q. And that's the contribution that's</p> <p>15 paid to the university? 12:33:24</p> <p>16 A. Yes.</p> <p>17 Q. And you see from '08 -- strike that.</p> <p>18 From '07 to '08 the profit increased</p> <p>19 by approximately \$41,000; do you see that?</p> <p>20 A. Yes. 12:33:39</p> <p>21 Q. And that was again during the year</p> <p>22 that Mr. Baffo had control over the budget;</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. And that was an increase from the 12:33:45</p>	<p>1 R. Rizzuto</p> <p>2 Q. But you also see for 2009 there was a</p> <p>3 significant reduction in the expenses.</p> <p>4 Do you see that?</p> <p>5 A. From what time? 12:34:57</p> <p>6 Q. From 2008 to 2009.</p> <p>7 A. Yes.</p> <p>8 Q. There was actually a reduction of</p> <p>9 approximately \$545,000?</p> <p>10 A. Yes. 12:35:07</p> <p>11 Q. If you trust my math.</p> <p>12 A. I trust it.</p> <p>13 Q. But you also see from revenue in 2008</p> <p>14 to 2009 decreased from approximately \$71,000?</p> <p>15 A. Yes. 12:35:19</p> <p>16 Q. So during the year that you took back</p> <p>17 the budget revenue decreased but expenses</p> <p>18 decreased by a greater amount which is what</p> <p>19 resulted in the approximately 625 or \$650,000</p> <p>20 profit depending on whether you look at the chart 12:35:34</p> <p>21 or your affidavit?</p> <p>22 A. Yes.</p> <p>23 Q. So comparing going back to 2006 to</p> <p>24 2007 you see the profit decreased significantly</p> <p>25 during that year; correct? 12:36:14</p>
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<p>1 R. Rizzuto</p> <p>2 prior year you had had control over the budget;</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. So in the year that you took over the 12:33:51</p> <p>6 budget Mr. Baffo generated more revenue than you</p> <p>7 had in the prior year; correct?</p> <p>8 A. Yes.</p> <p>9 Q. And he also increased the profit of</p> <p>10 the de Seversky Center during that same year; is 12:34:02</p> <p>11 that fair to say?</p> <p>12 A. Yes.</p> <p>13 Q. And is that a positive as far as</p> <p>14 performance of the general manager position?</p> <p>15 Would you consider that to be a good thing? 12:34:16</p> <p>16 A. Yes.</p> <p>17 Q. And similarly if we -- strike that.</p> <p>18 But for fiscal year 2009 you felt the</p> <p>19 need to take away the budget control from Mr.</p> <p>20 Baffo? 12:34:39</p> <p>21 A. Yes.</p> <p>22 Q. And we see -- you can see what the</p> <p>23 numbers are from that that the profit for '09 and</p> <p>24 2010 both increased; correct?</p> <p>25 A. Yes. 12:34:50</p>	<p>1 R. Rizzuto</p> <p>2 A. Yes.</p> <p>3 Q. And if you trust my math it is</p> <p>4 reduction of approximately \$344,000 less in profit</p> <p>5 from the prior year. 12:36:24</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And that was a year in which you had</p> <p>9 control over the budget; correct, 2007?</p> <p>10 A. Yes. 12:36:32</p> <p>11 Q. Did you attribute that decrease in</p> <p>12 profit to your management?</p> <p>13 A. I don't know what I would attribute it</p> <p>14 to. I was responsible for it though.</p> <p>15 Q. So you would have some -- strike that. 12:36:45</p> <p>16 You were responsible for it though,</p> <p>17 you would agree with that?</p> <p>18 A. Yes.</p> <p>19 Q. And if anyone is going to be blamed</p> <p>20 you should accept some of the blame for it? 12:36:55</p> <p>21 A. Yes.</p> <p>22 Q. And is that one of the reasons that</p> <p>23 you gave control of the budget to Mr. Baffo for</p> <p>24 fiscal year 2008?</p> <p>25 A. No. 12:37:08</p>

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1 R. Rizzuto

2 Q. Now I wanted to go back to we talked

3 briefly about a reorganization that took place in

4 2008. I am sorry, the end of fiscal year 2008.

5 What do you recall about that 12:37:39

6 reorganization?

7 A. I recall a certain amount of people

8 their jobs being eliminated.

9 Q. Do you recall how many jobs were

10 eliminated as part of this reduction in force? 12:38:04

11 A. As I said before, I think it was five

12 or six.

13 Q. Do you know what prompted the need for

14 this reorganization?

15 A. I was foreseeing that the economy was 12:38:16

16 not going to -- I was concerned about the economy.

17 You know everything you hear on the television and

18 also you know and I looked at the positions and

19 said to myself are these people -- is there a lot

20 of productivity with each of these individuals and 12:38:35

21 the answer to me was no.

22 Q. And what was that based on?

23 A. Well, based on their performance.

24 Based on what they were doing and then thinking

25 about productivity. You know the country is -- 12:38:54

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1 R. Rizzuto

2 the economy is, a lot of it is based on

3 productivity and I just looked at each individual

4 position and said okay, how can we be able to

5 eliminate these positions and be able to continue 12:39:06

6 on and get the job done that these people were

7 doing.

8 Q. And did you have any discussions with

9 Mr. Baffo about this reorganization?

10 A. Yes. 12:39:18

11 Q. And I think you touched on it briefly,

12 but what conversations did you have with Mr. Baffo

13 about this reorganization?

14 A. I told him what my feelings were about

15 it and what I wanted to do and that's really what 12:39:29

16 I remember.

17 Q. Did he make any recommendations as to

18 what positions could be eliminated?

19 A. I don't recall that he did. I just

20 remember him really freaking out. 12:39:42

21 Q. And why -- what was your understanding

22 of why he was freaking out?

23 A. He couldn't grasp on to the concept of

24 if we have an expectation for a person or we give

25 the people that we are going to still be here an 12:39:58

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1 R. Rizzuto

2 expectation of what the job can do, it is a bigger

3 thinking. It's a wider range of thinking as a

4 manager, as a leader and how are we going to

5 accomplish. We have to do this you know and 12:40:13

6 finally he resorted to the fact and agreed with me

7 on it, but I was really taken back at his reaction

8 to it, that kind of prompted me to say you know,

9 it is falling in line with the whole

10 accountability. 12:40:31

11 MR. FILOSA: Could you mark this as

12 Rizzuto 4.

13 (Rizzuto Exhibit 4, a three-page

14 document Bates stamped AB 455 through 457,

15 marked for identification, as of this date.) 12:41:26

16 Q. Now you have been shown a document

17 that's been marked as Rizzuto Exhibit 4. It is a

18 three-page document Bates stamped AB 455 through

19 457. Please take a look at it and let me know

20 when you are ready. 12:41:42

21 Now do you recognize this document?

22 A. No, I don't.

23 Q. It appears to be a memo from Mr. Baffo

24 to you dated October 28, 2008?

25 A. Yes, I see that. 12:44:08

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1 R. Rizzuto

2 Q. Have you ever seen this before?

3 A. I don't recall seeing this, no.

4 Q. Do you recall Anthony having or Mr.

5 Baffo having submitted to you this memorandum? 12:44:17

6 A. No, I don't.

7 Q. And this memorandum includes a number

8 of recommendations with respect to the

9 reorganization of the de Seversky Center in

10 October of 2008? 12:44:29

11 A. Yes.

12 Q. And it includes the elimination of

13 certain positions?

14 A. Yes.

15 Q. Do you recall having received those? 12:44:35

16 A. No.

17 Q. Did you ask Mr. Baffo to create it?

18 A. No, not that I recall.

19 Q. And this was -- do you recall --

20 strike that. 12:44:49

21 But in this you see a number of

22 recommendations as to adjustments to the budget as

23 well as eliminating staff and other expenses?

24 A. Yes.

25 Q. And one of the positions, looking at 12:45:03

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<p>1 R. Rizzuto</p> <p>2 A. Well, you said did I look at it as a</p> <p>3 step backwards. If they need help in the kitchen</p> <p>4 I still go down and I wash dishes. I don't look</p> <p>5 at that as a step backwards. I look at it as the 14:09:52</p> <p>6 staff sees I can do that, then asking anybody else</p> <p>7 to do it really isn't a problem.</p> <p>8 Q. So it is something -- you do that as a</p> <p>9 positive attribute working down to perform the job</p> <p>10 that's clearly a job below or not responsibility 14:10:05</p> <p>11 of your job title and someone as the Director of</p> <p>12 Dining Services wouldn't normally be expected to</p> <p>13 be washing dishes, but it is something you take</p> <p>14 that responsibility on as ultimately your</p> <p>15 responsibility for the whole department. 14:10:20</p> <p>16 Part of that is washing dishes if</p> <p>17 necessary; is that fair to say?</p> <p>18 A. Yes. And part of that also is letting</p> <p>19 the staff know that you know we are in this</p> <p>20 together, we are doing this together and it is 14:10:31</p> <p>21 kind of a psychological thing too, if you will,</p> <p>22 that your -- that if you have no problems -- I</p> <p>23 have no problems stepping back into the kitchen</p> <p>24 and being executive chef, same thing.</p> <p>25 Q. Same thing as if you were out in the 14:10:43</p>	<p>1 R. Rizzuto</p> <p>2 position by creating two new positions and</p> <p>3 repositioning my catering sales manager."</p> <p>4 Do you see that?</p> <p>5 A. Yes. 14:11:56</p> <p>6 Q. Now what did you do to begin</p> <p>7 developing this plan in August of 2009?</p> <p>8 A. The initial part of this was just</p> <p>9 talking about it. Talking to -- I would speak to</p> <p>10 Eric about it and ask him what his thoughts were 14:12:12</p> <p>11 about it, how did he feel about it. The other</p> <p>12 person that I spoke to about it was Pilar Visconti</p> <p>13 and what her thoughts were on it. So the initial</p> <p>14 part of it was just conversation.</p> <p>15 Q. And just conversation with these two 14:12:33</p> <p>16 individuals?</p> <p>17 A. Mr. Aubrey I believe and I don't know</p> <p>18 that I had discussed it with anybody else.</p> <p>19 Q. But what were your -- do you recall</p> <p>20 what the extent of your conversations were with 14:12:49</p> <p>21 Miss Visconti?</p> <p>22 A. Exactly, no. I just asked -- I told</p> <p>23 her what I was thinking about doing. I don't even</p> <p>24 remember whether I got a reply out of her or not.</p> <p>25 I am sure she must have replied something, but I 14:13:05</p>
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<p>1 R. Rizzuto</p> <p>2 dining room and needed someone to wait tables, you</p> <p>3 could step in and do that --</p> <p>4 A. Sure.</p> <p>5 Q. -- right? I mean that's part of your 14:10:48</p> <p>6 job. I mean you are ultimately responsible, it</p> <p>7 rolls up to you and part of that requires working</p> <p>8 down from time to time; correct?</p> <p>9 A. Correct.</p> <p>10 Q. Now the reorganization that was set to 14:11:00</p> <p>11 take place in October of 2009 -- well, strike</p> <p>12 that.</p> <p>13 Can you get in front of you your</p> <p>14 affidavit which has been marked as I believe</p> <p>15 Rizzuto Exhibit 3? 14:11:18</p> <p>16 A. 2.</p> <p>17 Q. Rizzuto Exhibit 2.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. I want to direct your attention to 14:11:24</p> <p>21 paragraph 10.</p> <p>22 A. Okay.</p> <p>23 Q. And you state in paragraph 10: "In</p> <p>24 August 2009 I began developing a plan to</p> <p>25 reorganize and eliminate the general manager's 14:11:47</p>	<p>1 R. Rizzuto</p> <p>2 don't remember what that would have been.</p> <p>3 Q. Do you recall when these conversations</p> <p>4 were?</p> <p>5 A. I believe they were in the beginning 14:13:11</p> <p>6 of August, but dates no.</p> <p>7 Q. How do you know they were in August of</p> <p>8 2009?</p> <p>9 A. That's just what I recalled.</p> <p>10 Q. And your conversations with Mr. 14:13:32</p> <p>11 Redlich, do you recall when they took place?</p> <p>12 A. In the same month.</p> <p>13 Q. Also in August 2009?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall specifically when in 14:13:41</p> <p>16 August 2009?</p> <p>17 A. No.</p> <p>18 Q. And what did you discuss with Mr.</p> <p>19 Redlich?</p> <p>20 A. I sat and I asked him I believe what 14:13:52</p> <p>21 his feelings were on Anthony's -- Anthony, what he</p> <p>22 does as a daily, weekly job and I don't remember</p> <p>23 his exact conversation, but he didn't think very</p> <p>24 much of it and he may have even said I am not sure</p> <p>25 what he does behind his desk all the time. 14:14:19</p>

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1 R. Rizzuto

2 Q. Was that your understanding of what
3 Mr. Redlich's impression of Mr. Baffo's work
4 performance was, that he sat at his desk all day?

5 A. No. I don't think there was a great 14:14:32
6 relationship there from where I stood. I believe
7 that Anthony was jealous of Eric because of his --
8 he was a very good sales manager. Eric had his
9 issues at times with being able to deliver his
10 message to people. 14:14:49

11 Q. Did you ever -- so what did you
12 understand their relationship to be from during
13 fiscal year 2009?

14 A. There wasn't any kind of disagreements
15 that I know of. There wasn't any kind of 14:15:03
16 arguments. I believe that this really stemmed
17 from knowing that Anthony wouldn't let him do his
18 job. When Anthony would go on a sales call Eric
19 would get upset because most of the time he would
20 give a great price to somebody and not be able to 14:15:18
21 justify that price. They were afraid -- sales
22 were afraid that Anthony is going to be on this
23 call he is going to give the house away.

24 So they were looking more towards the
25 numbers. You know we have margins that we wanted 14:15:30

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1 R. Rizzuto

2 to meet and Anthony on the other hand should have
3 recognized that Eric was very, very good at what
4 he did and could handle that.

5 Q. Did you ever have any conversations 14:15:39
6 with Mr. Baffo about this?

7 A. No, no.

8 Q. Why?

9 A. No reason.

10 Q. Did you think that was part of your 14:15:51
11 job as Director of Dining Services that that's
12 something that you should address?

13 A. Sure. I believe that I could have.

14 Q. But you didn't?

15 A. No. 14:16:01

16 Q. And your conversations with Mr.
17 Redlich about Mr. Baffo -- strike that.

18 Other than asking Mr. Redlich about
19 Mr. Baffo's performance, what other discussions
20 did you have that you are referencing in paragraph 14:16:15
21 10 here?

22 A. I discussed with my thoughts on -- in
23 other words, I said to Eric do you think that you
24 could do your sales job as sales manager and also
25 get involved in some of the operations in the 14:16:36

1 R. Rizzuto

2 building and his answer to me was yes.

3 That was my initial thought on that
4 and trying to figure out how to restructure and I
5 believe it was Eric that I had stated to so where 14:16:51
6 else do you think we need some help, you know help
7 where we could use this money by eliminating the
8 general manager's position somewhere else in the
9 house.

10 So there were conversations like that. 14:17:03
11 I would ask him, I think I asked him to think
12 about it and get back to me.

13 Q. Now at this point were you discussing
14 with him eliminating the general manager position?

15 A. Yes. 14:17:25

16 Q. Was that -- at any point did you start
17 discussing that or was that all part of all your
18 discussions with him about eliminating the general
19 manager position or did it go more, progress more
20 linearly? 14:17:37

21 A. I had it in my mind that this is what
22 I was going to do. I was going to eliminate that
23 position. It was in my mind that I am going to do
24 this because I know that I can get more bang for
25 my buck because the fact that I was doing a lot of 14:17:51

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1 R. Rizzuto

2 it anyway. I needed some assistance in other
3 areas.

4 So to answer your question, I am
5 sorry, I don't know that every time I went in 14:18:01
6 there and said I wanted to eliminate it. The big
7 picture was I would like to eliminate the general
8 manager's position. That's what I believe I said
9 to him. I don't know how many times I said that
10 to him. I don't think it was a lot. 14:18:11

11 Q. What I am wondering is when you first
12 expressed this intention to him, eliminating the
13 general manager position.

14 When did you first express that to
15 him? 14:18:22

16 A. I believe it was in August.

17 Q. And why do you believe it was in
18 August?

19 A. Because it kind of goes back to that
20 documentation that I can't find to Len Aubrey that 14:18:29
21 I wanted to do this and I can't -- so that's why I
22 believe it was in August because that's when the
23 thought really came into my mind.

24 Q. But you are not sure when you first
25 expressed that thought to anyone else? 14:18:43

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1 R. Rizzuto
 2 A. When you say anybody else?
 3 Q. Whether it be Mr. Redlich, Miss
 4 Visconti or Mr. Aubrey.
 5 A. As I said, I believe it was in August. 14:18:50
 6 I don't have any documentation to prove that to
 7 you.
 8 Q. Did you ask Mr. Redlich to take any
 9 action or prepare for the elimination of the
 10 general manager position? 14:19:03
 11 A. I told him that I would offer him more
 12 money. I would bring his salary up to, I don't
 13 remember exactly what the salary was, but I had it
 14 all figured out that I would use the money from
 15 that position and not -- and I would have to stay 14:19:17
 16 within that position to be able to get Len to
 17 approve something like that, because Len's initial
 18 reaction always is is this going to be -- is there
 19 going to be any more money needed for this
 20 position. He was pretty strict about that. 14:19:30
 21 Q. So ultimately at the end of the day
 22 the change had to be cost neutral, you couldn't
 23 add anymore expenses to the budget as part of any
 24 anticipated change?
 25 A. Ultimately that was the goal. 14:19:42

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1 R. Rizzuto
 2 Q. Now you were talking about it and you
 3 said that you recognize there were some areas you
 4 would need assistance in?
 5 A. Yes. 14:19:57
 6 Q. What areas did you identify that you
 7 would need assistance in?
 8 A. It was in operations itself.
 9 Operations consisted of making sure that equipment
 10 was being placed in the right -- being taken care 14:20:12
 11 of, being placed in the right areas, carpet
 12 cleaning was done. The dining room would
 13 also directly report to Eric at that point if that
 14 position was approved.
 15 Q. Which position? 14:20:31
 16 A. Eric as being a -- his position
 17 ultimately came out to be sales and operations
 18 manager. That would be his new title.
 19 Q. Did you have any discussions -- strike
 20 that. 14:20:46
 21 Did you ask him to take any steps to
 22 prepare? I think you asked you this question
 23 before and you referenced an increase in his
 24 salary. So what I am wondering is if you asked
 25 him to take any action to prepare for the 14:20:58

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1 R. Rizzuto
 2 elimination of the general manager position.
 3 In your conversations with him did you
 4 say here is what you need to start doing?
 5 A. I don't recall if I did that or not. 14:21:11
 6 Sounds like something I would do, but I don't
 7 recall?
 8 Q. Did you have any e-mail communications
 9 with Mr. Redlich about your discussions?
 10 A. The discussions itself I don't believe 14:21:28
 11 so. I think most of it was verbal.
 12 Q. Are you aware of any written
 13 documentation which would show that you were
 14 discussing this with Mr. Redlich in August of
 15 2009? 14:21:38
 16 A. No.
 17 Q. What about your conversations with Len
 18 Aubrey, what do you recall discussing with Mr.
 19 Aubrey about the elimination of the general
 20 manager position? 14:21:48
 21 A. Also verbal and it was almost the same
 22 idea. This is what I want to do, this is why I
 23 want to do it and he agreed with me because he had
 24 known that Len and I had had discussions going
 25 back, I don't know how far, about Anthony's 14:22:12

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1 R. Rizzuto
 2 performance and he knew that he was -- his
 3 performance was not up to where it needed to be.
 4 Q. How did Mr. Aubrey know this?
 5 A. My discussions with him. 14:22:24
 6 Q. So was it based on any -- to the
 7 extent that you know, was it based on any
 8 independent knowledge or observations that he had?
 9 A. The only thing that he would be aware
 10 of would be the PDPs. 14:22:39
 11 Q. The performance reviews?
 12 A. Yes.
 13 Q. PDP that stands for Professional
 14 Development Program?
 15 A. Yes. 14:22:49
 16 Q. And do you recall when you first
 17 discussed the elimination of the general manager
 18 position with Mr. Aubrey?
 19 A. That is not as clear to me as -- I
 20 believe it was August as well, but I am pretty 14:23:06
 21 definitely sure that with Pilar and Eric it was
 22 and with Len I think it was definitely before
 23 September.
 24 Q. Why do you think it was before
 25 September? 14:23:20

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<p>1 R. Rizzuto</p> <p>2 A. Because of my missing document. I am</p> <p>3 sorry to keep referring to that, but.</p> <p>4 Q. Now at any point is there any -- are</p> <p>5 you aware of any written communications with Mr. 14:23:34</p> <p>6 Aubrey that references these discussions?</p> <p>7 A. No.</p> <p>8 Q. Did you communicate with him by e-mail</p> <p>9 about this topic?</p> <p>10 A. I don't believe I did. 14:23:43</p> <p>11 Q. So are you aware of any document which</p> <p>12 would show that you had discussed the plan to</p> <p>13 eliminate the general manager position with Mr.</p> <p>14 Aubrey in either August or September of 2009?</p> <p>15 A. No. 14:23:56</p> <p>16 Q. Now going through -- strike that.</p> <p>17 You indicate in paragraph 10 of your</p> <p>18 affidavit that you began to develop a plan to</p> <p>19 reorganize and eliminate the general manager's</p> <p>20 position by creating two new positions and 14:24:19</p> <p>21 repositioning the catering sales manager.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Now the catering sales manager, is</p> <p>25 that a reference to Mr. Redlich? 14:24:27</p>	<p>1 R. Rizzuto</p> <p>2 A. I don't believe so, and I don't</p> <p>3 believe it was in August. I think it was later</p> <p>4 on.</p> <p>5 Q. When you say later on, what do you 14:25:50</p> <p>6 mean?</p> <p>7 A. Maybe into September.</p> <p>8 Q. The general manager position wasn't</p> <p>9 eliminated though until October of 2009; correct?</p> <p>10 A. Yes, but these conversations were 14:25:58</p> <p>11 ongoing.</p> <p>12 Q. But is it your belief that you</p> <p>13 discussed with him him not needing the sales</p> <p>14 position before October of 2009?</p> <p>15 A. I don't know exactly when. 14:26:11</p> <p>16 Q. And why -- well, strike that.</p> <p>17 So what happened to the open sales</p> <p>18 position; was that pursued?</p> <p>19 A. No.</p> <p>20 Q. And what -- was that vacancy filled by 14:26:35</p> <p>21 someone else or was the budget filled in any other</p> <p>22 way, the savings for not going forward with that</p> <p>23 position used for any other position?</p> <p>24 A. Yes.</p> <p>25 Q. What position is that? 14:26:53</p>
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<p>1 R. Rizzuto</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall what two new positions</p> <p>4 you intended to create?</p> <p>5 A. I believe that initially I think was a 14:24:39</p> <p>6 sales position and it might have been a dining</p> <p>7 room position.</p> <p>8 Q. And why did you want to create these</p> <p>9 positions?</p> <p>10 A. I felt that the dining room needed 14:24:57</p> <p>11 some assistance. We were starting to grow a</p> <p>12 little bit, but what happened at that point I</p> <p>13 believe Eric said to me I think the money would be</p> <p>14 more -- I believe it was Eric that said to me I</p> <p>15 don't really need the sales position. I think 14:25:15</p> <p>16 that Melissa and I can handle it. Let's put the</p> <p>17 money towards the dining room I believe he said.</p> <p>18 Q. And do you recall when he said that?</p> <p>19 A. No.</p> <p>20 Q. Would that have been in your 14:25:29</p> <p>21 conversations that you believe you had with him</p> <p>22 before -- strike that.</p> <p>23 Do you believe that came up in the</p> <p>24 conversations that you had with him before the</p> <p>25 general manager position was eliminated? 14:25:41</p>	<p>1 R. Rizzuto</p> <p>2 A. Some of the money went towards Eric</p> <p>3 and some of it I believe was a dining room, might</p> <p>4 have been the dining room captain and a bar</p> <p>5 captain. 14:27:08</p> <p>6 Q. But that wasn't your original plan;</p> <p>7 correct?</p> <p>8 A. No.</p> <p>9 Q. Your original plan was to split up the</p> <p>10 money between Eric, dining room captain and the 14:27:15</p> <p>11 sales position; right?</p> <p>12 A. Yes.</p> <p>13 Q. And you indicate going on in paragraph</p> <p>14 10 of your affidavit you state: "In early</p> <p>15 September 2009 the appropriate paperwork was 14:27:31</p> <p>16 processed in order to authorize recruitment for</p> <p>17 these new positions and the positions were later</p> <p>18 listed on monster.com."</p> <p>19 Do you see that?</p> <p>20 A. Yes. 14:27:48</p> <p>21 Q. Was that before or after the decision</p> <p>22 had been made to eliminate the general manager</p> <p>23 position?</p> <p>24 A. My decision you are talking about, my</p> <p>25 initial decision? 14:28:02</p>

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<p style="text-align: right;">Page 178</p> <p>1 R. Rizzuto</p> <p>2 Q. Well, before the final decision was</p> <p>3 made.</p> <p>4 A. I believe it was -- I believe it was</p> <p>5 before. 14:28:14</p> <p>6 Q. Why was it before -- why were these</p> <p>7 positions posted before the final decision was</p> <p>8 made to eliminate the general manager position?</p> <p>9 A. I think if I recall right I had</p> <p>10 Anthony actually file it, putting those positions 14:28:24</p> <p>11 online. I knew what I wanted to do and I had him</p> <p>12 put them on. I think that's how it went.</p> <p>13 Q. It seems odd that you would have</p> <p>14 someone posting essentially what is going to be</p> <p>15 their replacement by filling out the paperwork and 14:28:37</p> <p>16 doing that, but your testimony is you already made</p> <p>17 the decision at that point and you had asked</p> <p>18 Anthony to fill out the paperwork for ultimately</p> <p>19 what would become his replacement?</p> <p>20 A. Yes. 14:28:51</p> <p>21 Q. And did you -- strike that.</p> <p>22 But looking to the next sentence in</p> <p>23 your affidavit you indicate that Len Aubrey</p> <p>24 approved the elimination of the general manager</p> <p>25 position on October 16, 2009; correct? 14:29:03</p>	<p style="text-align: right;">Page 180</p> <p>1 R. Rizzuto</p> <p>2 eliminated the general manager position?</p> <p>3 A. I don't know whether it was that or</p> <p>4 just trying it get some heads in the door. You</p> <p>5 know I don't recall that, you know start 14:30:22</p> <p>6 interviewing people.</p> <p>7 Q. And were these positions provided for</p> <p>8 in the 2009 budget, I am sorry, the fiscal year</p> <p>9 2010 budget?</p> <p>10 A. For positions to -- are you saying 14:30:37</p> <p>11 that will take the money up that was for the</p> <p>12 general manager; is that what you are saying?</p> <p>13 Q. Yes.</p> <p>14 A. I don't recall.</p> <p>15 Q. But you would expect it would be 14:30:51</p> <p>16 reflected in the budget if that was the plan was</p> <p>17 going to be going forward it would be included in</p> <p>18 the budget; right?</p> <p>19 A. It should be.</p> <p>20 Q. When you say it should be, what are 14:31:08</p> <p>21 you referring to?</p> <p>22 A. You would -- so the question is did I</p> <p>23 put in these positions in the initial budget for</p> <p>24 that year?</p> <p>25 Q. Yes. 14:31:22</p>
<p style="text-align: right;">Page 179</p> <p>1 R. Rizzuto</p> <p>2 A. Yes.</p> <p>3 Q. Now why didn't Mr. Aubrey approve the</p> <p>4 elimination of the general manager position at the</p> <p>5 same time he approved the recruitment of the other 14:29:12</p> <p>6 positions?</p> <p>7 A. I don't know what the answer to that</p> <p>8 is, but I do know that things take a long time to</p> <p>9 process through there. When I did that</p> <p>10 elimination for those other positions, that took 14:29:24</p> <p>11 almost four months for that to happen. I wanted</p> <p>12 it to happen in a month. It didn't take a month.</p> <p>13 It took three or four month to happen.</p> <p>14 Q. But wouldn't it make more sense to</p> <p>15 eliminate the general manager position at the same 14:29:45</p> <p>16 time you are recruiting for the other positions?</p> <p>17 A. In my mind, no.</p> <p>18 Q. Why not?</p> <p>19 A. Because you don't want to be caught</p> <p>20 with okay, now the position is gone and now we are 14:29:57</p> <p>21 going to start looking for them. It could take</p> <p>22 month to be able to find that position. I think</p> <p>23 this is the right way to do it.</p> <p>24 Q. And so the plan was to have these</p> <p>25 positions filled and ready to go at the time you 14:30:10</p>	<p style="text-align: right;">Page 181</p> <p>1 R. Rizzuto</p> <p>2 A. No.</p> <p>3 Q. What about did you eliminate the</p> <p>4 general manager position from the initial budget</p> <p>5 for that year? 14:31:30</p> <p>6 A. No.</p> <p>7 Q. Why not?</p> <p>8 A. Well, it would have red -- probably</p> <p>9 one of the reasons a red flag would have came up</p> <p>10 when Anthony saw the budget and didn't see a 14:31:37</p> <p>11 general manager's position in it, plus if the</p> <p>12 money is not there he would not be getting paid</p> <p>13 either.</p> <p>14 Q. What do you mean if the money is not</p> <p>15 there? 14:31:49</p> <p>16 A. In other words, if I eliminated the</p> <p>17 general manager's position before the fiscal year</p> <p>18 where does that leave -- there is not any money</p> <p>19 there for the general manager's position.</p> <p>20 Q. So you don't believe the salaries for 14:32:09</p> <p>21 these two new positions are included in the fiscal</p> <p>22 year 2010 budget?</p> <p>23 A. I don't believe they were, but I am</p> <p>24 sure there is a way to find out.</p> <p>25 MR. FILOSA: Mark this as 6. 14:32:35</p>

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<p>1 R. Rizzuto</p> <p>2 approved the elimination of the bar captain</p> <p>3 position -- strike that.</p> <p>4 Do you believe as part of it Mr.</p> <p>5 Aubrey had approved the creation of the bar 14:59:51</p> <p>6 captain position?</p> <p>7 A. I believe so.</p> <p>8 Q. So there would be paperwork on</p> <p>9 approving the creation of the bar captain</p> <p>10 position? 15:00:03</p> <p>11 A. Yes.</p> <p>12 RQ MR. FILOSA: I don't think any of that</p> <p>13 has been produced, any recruitment</p> <p>14 authorizations for the bartender captain</p> <p>15 position. 15:00:13</p> <p>16 At this point I will call for the</p> <p>17 production of that and we can obviously</p> <p>18 review the production to see whether or not,</p> <p>19 but I haven't seen this in the production</p> <p>20 but again, I will follow up in writing on 15:00:23</p> <p>21 this.</p> <p>22 MR. SPARBER: Okay.</p> <p>23 Q. What affect did you hope that the</p> <p>24 reorganization would have on the de Seversky</p> <p>25 Center? What were the goals of the 15:00:47</p>	<p>1 R. Rizzuto</p> <p>2 because I was doing it anyway.</p> <p>3 So the goal was to have a more</p> <p>4 effective operation, more leadership. Anthony was</p> <p>5 really holding us back when it came to that part 15:02:03</p> <p>6 of it. His directing the staff and directing them</p> <p>7 in the right direction and professionally</p> <p>8 developing them.</p> <p>9 Q. And how did you come to the conclusion</p> <p>10 that Mr. Baffo was not doing this? 15:02:15</p> <p>11 A. Well, for one instance I had talked to</p> <p>12 Anthony about PDPs were a big thing and I had to</p> <p>13 review them because he was giving people that</p> <p>14 really didn't deserve to be as the top tier of</p> <p>15 this PDP. In fact, one year I had brain surgery 15:02:35</p> <p>16 and I just got out of the hospital and paperwork</p> <p>17 had to go over to human resources and I phoned to</p> <p>18 send them to me because I didn't trust his</p> <p>19 judgment on this. I went through that I almost</p> <p>20 had another aneurism because I was looking at what 15:02:51</p> <p>21 he gave these people. I'm saying where do you --</p> <p>22 what is -- where is your thought process here.</p> <p>23 And then I come to find out later on</p> <p>24 that -- I had talked to him about one of the girls</p> <p>25 in the sales department, Melissa Patron and he had 15:03:03</p>
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<p>1 R. Rizzuto</p> <p>2 reorganization, the elimination of the general</p> <p>3 manager position?</p> <p>4 A. Well, they were twofold. Part of this</p> <p>5 whole leadership process that I have been talking 15:00:56</p> <p>6 about we wanted to take that to another level and</p> <p>7 put that more so into effect. Meaning that when</p> <p>8 we did hire people, as I said before they have</p> <p>9 clear direction.</p> <p>10 We wanted also for people to have a 15:01:11</p> <p>11 quality of life. We wanted them to be able to --</p> <p>12 just because we did this reorganization, both</p> <p>13 reorganizations didn't mean that people, we wanted</p> <p>14 people to work more. It is very important to us</p> <p>15 and to me that people have a quality of life. 15:01:23</p> <p>16 In the restaurant business I had a</p> <p>17 goal to say we are not going to have those 78 hour</p> <p>18 week. I want to be able to get these people's</p> <p>19 hours to 45, 50 hours a week. That was only going</p> <p>20 to happen through our training and our clear 15:01:38</p> <p>21 direction.</p> <p>22 Where we identified there needed to be</p> <p>23 help in the dining room, we wanted that to be</p> <p>24 taken care of through these positions. I knew I</p> <p>25 could handle the general manager part of it 15:01:50</p>	<p>1 R. Rizzuto</p> <p>2 made me believe that he sat with her and did her</p> <p>3 PDP or no, a write up on her and Melissa somehow</p> <p>4 found or Eric reviewed it with her she said that</p> <p>5 she never signed it. We believe that he may have 15:03:20</p> <p>6 forged that document.</p> <p>7 Q. Did you ever address that with him?</p> <p>8 A. With?</p> <p>9 Q. Mr. Baffo?</p> <p>10 A. This is after he left. 15:03:26</p> <p>11 Q. Do you have a copy of that document?</p> <p>12 A. I am sure we do.</p> <p>13 RQ MR. FILOSA: I am sure your attorneys</p> <p>14 can produce it to us.</p> <p>15 MR. SPARBER: Just to be clear, what 15:03:37</p> <p>16 is this document?</p> <p>17 THE WITNESS: It was a write-up for</p> <p>18 Melissa Patron.</p> <p>19 MR. SPARBER: A write-up?</p> <p>20 THE WITNESS: Yeah. 15:03:44</p> <p>21 A. Can I continue?</p> <p>22 Q. Please.</p> <p>23 A. I want you to know that I really tried</p> <p>24 to coach Anthony. I mean I was his friend, but I</p> <p>25 wanted to see him succeed and you know between the 15:04:10</p>

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<p>1 R. Rizzuto</p> <p>2 lateness and the way he was dressed.</p> <p>3 I even took him to Joseph Banks and I</p> <p>4 bought him a thousand dollars worth of suits one</p> <p>5 night and got in trouble for it because I paid for 15:04:24</p> <p>6 it on NYIT, but I wanted him to look the role and</p> <p>7 I really wanted him to succeed and I really did</p> <p>8 try. I coached him. I have to tell you.</p> <p>9 Q. So going back to the PDPs, the</p> <p>10 performance reviews, was it your impression that 15:04:40</p> <p>11 Mr. Baffo was lenient with staff on these</p> <p>12 performance reviews?</p> <p>13 A. I would have to look at them to see</p> <p>14 exactly what I wrote in them, but -- I would have</p> <p>15 to look at them for me to answer that question yes 15:04:53</p> <p>16 or no.</p> <p>17 Q. Did you review Mr. Baffo's -- for</p> <p>18 example, at the end of fiscal year 2009 which</p> <p>19 would have been you know August 2009, did you</p> <p>20 review the performance reviews that Mr. Baffo had 15:05:08</p> <p>21 done for the staff that reported to him?</p> <p>22 A. In 2009?</p> <p>23 Q. Yes.</p> <p>24 A. I would imagine I did, but I don't</p> <p>25 remember. 15:05:17</p>	<p>1 R. Rizzuto</p> <p>2 review for Mr. Redlich as sales manager?</p> <p>3 A. Yes.</p> <p>4 Q. Do you recall the rating that Mr.</p> <p>5 Redlich received for fiscal year 2009? 15:06:26</p> <p>6 A. I believe Anthony gave him an</p> <p>7 unsatisfactory.</p> <p>8 Q. And did you agree with that?</p> <p>9 A. No.</p> <p>10 Q. Why not? 15:06:35</p> <p>11 A. Because I thought that Eric was doing</p> <p>12 a very good job in sales and for what he could do,</p> <p>13 what Anthony would let him do. He was really held</p> <p>14 back by Anthony, so I changed it.</p> <p>15 Q. And when did you change it? 15:06:50</p> <p>16 A. I don't remember exactly when I did</p> <p>17 that, but I did change it.</p> <p>18 Q. Before it was provided to Mr. Redlich?</p> <p>19 A. No, after.</p> <p>20 Q. Why did you wait until after it was 15:06:59</p> <p>21 provided to Mr. Redlich?</p> <p>22 A. I don't remember why I did that.</p> <p>23 Q. Did you review his performance review</p> <p>24 before it was provided to him?</p> <p>25 A. I don't remember. 15:07:08</p>
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<p>1 R. Rizzuto</p> <p>2 Q. Do you remember whether or not you had</p> <p>3 to change any of the comments or the ratings on</p> <p>4 those?</p> <p>5 A. I don't remember, but that's my style 15:05:24</p> <p>6 to have done that and I think -- I don't remember</p> <p>7 which year it was that I actually, when I took</p> <p>8 them home, maybe it was 2008 but I would have if I</p> <p>9 didn't agree with them.</p> <p>10 Q. And what year did you have your brain 15:05:38</p> <p>11 surgery?</p> <p>12 A. 2008 or July I think it was.</p> <p>13 Q. And you recall reviewing during the</p> <p>14 time that you were at home or otherwise shortly</p> <p>15 thereafter, do you recall reviewing performance 15:05:50</p> <p>16 reviews presumably for fiscal year 2008?</p> <p>17 A. I do.</p> <p>18 Q. And you recall having to make changes</p> <p>19 or alterations to them to reflect what you felt</p> <p>20 was appropriate? 15:06:04</p> <p>21 A. Yes.</p> <p>22 Q. Now as general manager for turning to</p> <p>23 2009, would Mr. Baffo have reviewed -- strike</p> <p>24 that.</p> <p>25 Would he have performed a performance 15:06:18</p>	<p>1 R. Rizzuto</p> <p>2 Q. But if you had reviewed it you would</p> <p>3 have made that change before it was given to him;</p> <p>4 right?</p> <p>5 A. I might have, yeah. 15:07:17</p> <p>6 Q. I mean the last thing you would want</p> <p>7 is for an employee to receive a review that you</p> <p>8 hadn't reviewed; right?</p> <p>9 A. Sure.</p> <p>10 Q. Because you don't want the employee to 15:07:25</p> <p>11 get the impression that you agreed with that</p> <p>12 recommendation if in fact you didn't?</p> <p>13 A. Sure.</p> <p>14 Q. So had you reviewed Mr. Redlich's</p> <p>15 review for 2009, you would have corrected it to -- 15:07:35</p> <p>16 what would you have corrected it to?</p> <p>17 A. I think I corrected it to -- what are</p> <p>18 the tiers. They were unsatisfactory, needed</p> <p>19 development and fully proficient I think it was.</p> <p>20 Q. So you believe that you had corrected 15:07:52</p> <p>21 it to fully proficient?</p> <p>22 A. I think I did.</p> <p>23 Q. And that was your understanding was</p> <p>24 Mr. Baffo had rated him as unsatisfactory?</p> <p>25 A. I believe so. 15:08:02</p>

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<p>1 R. Rizzuto</p> <p>2 don't remember the exact, what the conversations</p> <p>3 were about or the meetings were about.</p> <p>4 Q. Do you know why you attached this</p> <p>5 e-mail to your affidavit? 15:44:52</p> <p>6 A. It sounds like it had something to do</p> <p>7 with the termination. I mean that would be the</p> <p>8 only reason that was part of this.</p> <p>9 Q. That's the only reason that you would</p> <p>10 have attached this to the affidavit? 15:45:18</p> <p>11 A. More than likely.</p> <p>12 Q. And if you look at the bottom e-mail</p> <p>13 on this page, do you see part of it is cut off?</p> <p>14 A. No.</p> <p>15 MR. SPARBER: What is cut off? 15:45:34</p> <p>16 MR. FILOSA: The top part. Strike</p> <p>17 that. Whatever version I am working off of</p> <p>18 is slightly different.</p> <p>19 Q. Now you also attached to your</p> <p>20 affidavit the approval from Mr. Aubrey as Exhibit 15:45:59</p> <p>21 C.</p> <p>22 Do you see that? It is the page</p> <p>23 that's Bates stamped D 07297. Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. And is this the approval that Mr. 15:46:28</p>	<p>1 R. Rizzuto</p> <p>2 of the management staff at the de Seversky</p> <p>3 Center."?</p> <p>4 A. Yes.</p> <p>5 Q. What discussion are you referencing? 15:47:30</p> <p>6 A. In reference to the elimination of</p> <p>7 this position.</p> <p>8 Q. And was it one discussion or more than</p> <p>9 one discussion?</p> <p>10 A. I think as I stated before, I am not 15:47:43</p> <p>11 sure how many discussions I had with him and I am</p> <p>12 not -- I am not sure whether this had -- I know</p> <p>13 Len, Carol and I sat down at some point. I don't</p> <p>14 remember what the date was.</p> <p>15 So maybe it was, had to do with that 15:48:01</p> <p>16 memo. I don't recall.</p> <p>17 Q. Do you know whether or not this was</p> <p>18 before or after you sat down with Mr. Aubrey and</p> <p>19 Miss Jablonsky?</p> <p>20 A. I don't recall. 15:48:11</p> <p>21 Q. Well, do you know whether or not this</p> <p>22 discussion that you are referring to here was your</p> <p>23 meeting with Mr. Aubrey and Miss Jablonsky?</p> <p>24 A. No, I am not sure.</p> <p>25 Q. Do you recall whether it was one 15:48:21</p>
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<p>1 R. Rizzuto</p> <p>2 Aubrey had signed regarding the elimination of the</p> <p>3 general manager position?</p> <p>4 A. That's his signature, yes.</p> <p>5 Q. So is this when the decision became 15:46:37</p> <p>6 final?</p> <p>7 A. When he puts his stamp on it, yeah.</p> <p>8 Q. And it is dated -- his signature is</p> <p>9 dated 10/16/09?</p> <p>10 A. Yes. 15:46:48</p> <p>11 Q. And did you draft this?</p> <p>12 A. Yes.</p> <p>13 Q. So you -- strike that.</p> <p>14 The date that's on this memo dated</p> <p>15 October 16, 2008; do you see that? 15:46:58</p> <p>16 A. Yes.</p> <p>17 Q. That's just -- the 2008 is just a</p> <p>18 typo. It is actually 2009; right?</p> <p>19 A. Yes.</p> <p>20 Q. Because it is signed by Mr. Aubrey on 15:47:08</p> <p>21 October 16, 2009; right?</p> <p>22 A. Yes.</p> <p>23 Q. Now turning to the first sentence of</p> <p>24 this memo, do you see it says: "As a followup to</p> <p>25 our discussion with regards to the reorganization 15:47:24</p>	<p>1 R. Rizzuto</p> <p>2 discussion with Mr. Aubrey or more than one</p> <p>3 discussion?</p> <p>4 A. As I stated before, I don't remember.</p> <p>5 I don't recall how many discussions I had with 15:48:29</p> <p>6 him.</p> <p>7 Q. And similarly there's no documents</p> <p>8 that you recall which would show that you</p> <p>9 discussed this with Mr. Aubrey prior to October</p> <p>10 16, 2009? 15:48:43</p> <p>11 A. No.</p> <p>12 Q. Because you looked for this memo and</p> <p>13 you can't find it and you looked on the computer</p> <p>14 and can't find it? Can you give me a verbal</p> <p>15 answer? 15:48:50</p> <p>16 A. Yes, I have.</p> <p>17 Q. And you haven't been able to find this</p> <p>18 memo?</p> <p>19 A. No.</p> <p>20 Q. Now turning to the second paragraph 15:48:58</p> <p>21 you indicate: "I am forecasting flat revenues for</p> <p>22 fiscal 2010 and have designed a plan to create</p> <p>23 three positions with the savings."</p> <p>24 Do you see that?</p> <p>25 A. Yes. 15:49:10</p>

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<p>1 R. Rizzuto</p> <p>2 Q. And do you recall when this meeting</p> <p>3 was?</p> <p>4 A. No.</p> <p>5 Q. Do you recall whether or not it was 16:24:31</p> <p>6 during Miss Jablonsky's first week of employment</p> <p>7 with NYIT?</p> <p>8 A. Yes.</p> <p>9 Q. And was it during her first week?</p> <p>10 A. I believe what she stated was in that 16:24:40</p> <p>11 meeting what I do remember saying this is what we</p> <p>12 are doing. This is my initiation to NYIT or</p> <p>13 something like that, but I don't remember what the</p> <p>14 date was, but I do know that was in the beginning</p> <p>15 when she started. 16:24:53</p> <p>16 Q. And do you know whether that was</p> <p>17 before or after Mr. Rizzuto had signed the</p> <p>18 approval for the elimination of the general</p> <p>19 manager position?</p> <p>20 A. Mr. Aubrey? 16:25:01</p> <p>21 Q. Yeah, sorry, Mr. Aubrey.</p> <p>22 A. I would imagine that it would be after</p> <p>23 because Len would have wanted Carol's opinion on</p> <p>24 this or blessing on this.</p> <p>25 Q. Was it before or after he had approved 16:25:21</p>	<p>1 R. Rizzuto</p> <p>2 remember when it was.</p> <p>3 MR. FILOSA: Mark this as 10.</p> <p>4 (Rizzuto Exhibit 10, a one-page</p> <p>5 document Bates stamped D 06587, marked for 16:28:04</p> <p>6 identification, as of this date.)</p> <p>7 Q. You have been shown a document that's</p> <p>8 been marked as Rizzuto Exhibit 10. It is a</p> <p>9 one-page document Bates stamped D 06587. Please</p> <p>10 review it and let me know when you are ready. 16:28:10</p> <p>11 A. Okay.</p> <p>12 Q. And have you ever seen this before?</p> <p>13 A. I believe Neil showed me this.</p> <p>14 Q. And is this a calendar entry from --</p> <p>15 indicating a meeting with Mr. Aubrey? 16:28:25</p> <p>16 A. Yes.</p> <p>17 Q. And do you recall this meeting with</p> <p>18 Mr. Aubrey?</p> <p>19 A. No.</p> <p>20 Q. And this meeting was scheduled to 16:28:35</p> <p>21 start at 8:30 and end at 9 a.m.?</p> <p>22 A. Yes.</p> <p>23 Q. And it was for October 16, 2009?</p> <p>24 A. Yes.</p> <p>25 Q. Was this the meeting when you met with 16:28:44</p>
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<p>1 R. Rizzuto</p> <p>2 the decision, would he have wanted to consult with</p> <p>3 Miss Jablonsky?</p> <p>4 A. He would have wanted to consult with</p> <p>5 Carol before. 16:25:30</p> <p>6 Q. And did you -- strike that.</p> <p>7 Do you know how the meeting with Miss</p> <p>8 Jablonsky was arranged?</p> <p>9 A. No.</p> <p>10 Q. Did you schedule the meeting with her? 16:25:43</p> <p>11 A. I may have, but I don't recall if I</p> <p>12 did.</p> <p>13 Q. Do you know if Mr. Aubrey did?</p> <p>14 A. I don't recall.</p> <p>15 Q. Did you -- before meeting with Miss 16:25:53</p> <p>16 Jablonsky did you and Mr. Aubrey discuss what you</p> <p>17 would talk to Miss Jablonsky about in the meeting?</p> <p>18 A. Repeat the question.</p> <p>19 MR. FILOSA: Can you read it back?</p> <p>20 (Record read.) 16:26:10</p> <p>21 A. I don't recall.</p> <p>22 Q. But do you recall meeting with Mr.</p> <p>23 Aubrey before you met with Miss Jablonsky?</p> <p>24 A. The time frame as I said back, Len and</p> <p>25 I have had discussions about this but I don't 16:26:33</p>	<p>1 R. Rizzuto</p> <p>2 Miss Jablonsky?</p> <p>3 A. I don't recall.</p> <p>4 Q. Do you recall what time of day it was</p> <p>5 that you met with Miss Jablonsky? 16:28:52</p> <p>6 A. No.</p> <p>7 Q. But this is the same date that Mr.</p> <p>8 Aubrey signed the approval of the elimination of</p> <p>9 the general manager position?</p> <p>10 A. Yes. 16:29:03</p> <p>11 Q. Is this -- did you provide this, that</p> <p>12 memo to Mr. Aubrey at this meeting?</p> <p>13 A. As I said, I don't remember. I don't</p> <p>14 remember the meeting.</p> <p>15 Q. How did you provide the memo to Mr. 16:29:18</p> <p>16 Aubrey that he ultimately signed?</p> <p>17 A. I don't recall, but there's different</p> <p>18 -- most of the time it would be a -- probably</p> <p>19 electronic e-mail that either he would print out.</p> <p>20 Sometimes -- we do it different ways. Sometimes I 16:29:38</p> <p>21 give it to his assistant to give to him, so.</p> <p>22 Q. Do you know what happened in this</p> <p>23 instance?</p> <p>24 A. No, I don't recall.</p> <p>25 Q. Did you search your e-mails to see 16:29:47</p>

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1 R. Rizzuto
 2 affidavit that's been marked as Rizzuto Exhibit 2.
 3 A. Yes.
 4 Q. And specifically direct your attention
 5 to the documents attached as Exhibit F which begin 16:43:54
 6 at D 07303. If you turn to the next page 7304
 7 that's what appears to be a memo from you to Miss
 8 Jablonsky.
 9 Do you see that?
 10 A. Yes. 16:44:27
 11 Q. And could you just take a moment to
 12 review this and the next page and let me know when
 13 you are ready.
 14 THE VIDEOGRAPHER: The time is
 15 approximately 4:44. This will end videotape 16:44:49
 16 number 3 in the today's deposition of Mr.
 17 Robert Rizzuto on Tuesday March 22, 2011.
 18 We are going off the record.
 19 (Recess taken.)
 20 THE VIDEOGRAPHER: The time is now 16:45:25
 21 approximately 4:45. This will begin
 22 videotape number 4 of today's deposition of
 23 Mr. Robert Rizzuto on Tuesday March 22, 2011
 24 and we are back on the record.
 25 BY MR. FILOSA: 16:45:48

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1 R. Rizzuto
 2 A. Okay, I have read it.
 3 Q. And is this a memorandum that you
 4 provided to Miss Jablonsky?
 5 A. Yes. 16:45:57
 6 Q. And it is dated October 20, 2009?
 7 A. Yes.
 8 Q. And this was after Mr. Aubrey had
 9 already approved the elimination of the general
 10 manager position? 16:46:09
 11 A. Yes.
 12 Q. And do you recall why you prepared
 13 this memorandum?
 14 A. I would believe it is because Carol
 15 probably asked me for this. 16:46:24
 16 Q. Do you recall why she asked you for a
 17 memorandum?
 18 A. No.
 19 Q. Do you recall -- did you ask why she
 20 wanted the memorandum? 16:46:36
 21 A. I may have, but I don't recall asking.
 22 Q. And did she tell you what she wanted
 23 you to put in the memorandum?
 24 A. I don't recall.
 25 Q. What was your understanding of what 16:46:46

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1 R. Rizzuto
 2 should be included in the memorandum that you
 3 obviously drafted?
 4 A. I don't know.
 5 Q. So you just drafted this then? 16:47:01
 6 A. No. You are asking me for an honest
 7 answer and I don't know if I -- I don't know. I
 8 don't recall her asking me to put anything
 9 specific in. She may have. What I am saying is I
 10 don't recall that. 16:47:18
 11 Q. And what was your understanding of --
 12 strike that.
 13 What was your understanding of the
 14 purpose of providing this information to the head
 15 of human resources? 16:47:40
 16 A. From reading it looks like justifying
 17 the reasons for the elimination of the position.
 18 Q. And in justifying the position you
 19 wanted to make sure that the information you
 20 provide is accurate; right? 16:47:57
 21 A. Yes.
 22 Q. Because you wouldn't want to mislead
 23 Miss Jablonsky as the head of human resources;
 24 right?
 25 A. Correct. 16:48:03

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1 R. Rizzuto
 2 Q. Because she needs all the information
 3 so that she can perform that HR function; right?
 4 A. Yes.
 5 Q. Now turning to the memorandum, the 16:48:09
 6 first line you say: "With continued uncertainty
 7 regarding the economy I am recommending a
 8 reorganization and consolidation of the de
 9 Seversky Center's top management. It is my
 10 feeling that we will continue to feel pressure 16:48:26
 11 through fiscal 2010."
 12 Do you see that?
 13 A. Yes.
 14 Q. What are you referring to when you say
 15 "continued uncertainty regarding the economy"? 16:48:35
 16 A. Uncertainty of how much revenue that
 17 we will be generating for that fiscal year.
 18 Q. And did you review the revenue up to
 19 that period of time in -- before drafting this?
 20 A. I might have, but I don't recall 16:49:03
 21 actually doing it.
 22 Q. Do you recall whether or not you
 23 reviewed Caterease to see whether or not what the
 24 bookings were for the remainder of this fiscal
 25 year? 16:49:15

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1 R. Rizzuto
 2 right?
 3 A. No. As I really believe that it has.
 4 I know that it has.
 5 Q. But at the time that you planned it? 16:57:59
 6 A. I am sorry.
 7 Q. You were planning to eliminate the
 8 general manager position?
 9 A. Yes.
 10 Q. And replace it with a dining room 16:58:06
 11 manager position, a catering sales associate
 12 position as well as an increase in salary to Mr.
 13 Redlich.
 14 So all of that would have had the same
 15 if not more expense on the budget than Mr. Baffo's 16:58:17
 16 salary; is that correct?
 17 A. In the theory number yes. Looking at
 18 apples to apples Anthony's salary and the salary
 19 is a wash so to speak, but what we were trying to
 20 accomplish was these people that we filled in 16:58:34
 21 these positions to do a better job which would
 22 offset our expenses in other areas. It would be a
 23 direct -- I want to make sure that I am explaining
 24 this to you correctly because I don't think all
 25 the time I have been speaking I don't think you 16:58:47

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1 R. Rizzuto
 2 Q. Now you go on to say your
 3 recommendation to Miss Jablonsky -- you use the
 4 word recommendation; right?
 5 A. Yes. 17:00:07
 6 Q. At this point was it a recommendation?
 7 Mr. Aubrey had already approved the elimination of
 8 the position; right?
 9 A. Yes.
 10 Q. So was it still a recommendation at 17:00:14
 11 that point?
 12 A. It wouldn't have been if that was --
 13 if Mr. Aubrey signed off on it, but I don't know
 14 whether Mr. Kloepper still had to sign off on
 15 this. I don't know what the date was that Mr. 17:00:32
 16 Kloepper signed off on it.
 17 Q. You go on to say: "My recommendation
 18 is to eliminate the general manager's position
 19 currently held by Anthony Baffo and use the funds
 20 to create the dining room captain/sales associate 17:00:44
 21 position; correct?
 22 A. Yes.
 23 Q. So that was your plan as of October
 24 20, 2009?
 25 A. Yes. 17:00:50

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1 R. Rizzuto
 2 understand what I am saying.
 3 I have a dining room captain that's
 4 say scheduling staff. We didn't do a good job
 5 when Anthony was there and scheduling staff. We 16:59:00
 6 didn't -- the projections weren't -- they didn't
 7 always match. The projections didn't match the
 8 actuals all the time which I came to find.
 9 In training the staff how to do that
 10 and doing a better job on that, that's going to 16:59:12
 11 save me salaries, other salaries within that
 12 department. That's just one example.
 13 Q. So you don't provide that here, do
 14 you?
 15 A. No. 16:59:21
 16 Q. So I am trying to understand you
 17 reference lower revenue numbers in your memo to
 18 Miss Jablonsky.
 19 Were you projecting revenues to be
 20 flat or lower? 16:59:37
 21 A. I more than likely was projecting it
 22 to be flat.
 23 Q. So why include the reference to lower
 24 revenue?
 25 A. Don't know. 16:59:52

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1 R. Rizzuto
 2 Q. And as we talked about earlier you
 3 never let -- the sales associate position was
 4 never hired; right?
 5 A. No, it wasn't. 17:00:57
 6 Q. Because you had conversations with Mr.
 7 Redlich where he felt that he could get by without
 8 an additional sales associate?
 9 A. Yes.
 10 Q. So those conversations must have 17:01:05
 11 occurred after October 20, 2009; right?
 12 A. Not necessarily, but I don't remember.
 13 Q. Well, at this point though the plan
 14 was to eliminate the sales -- to fill the sales
 15 associate position; right? 17:01:22
 16 A. Yes. You are right it would have.
 17 Q. And you go on to say: "I would like
 18 to give our sales manager Eric Redlich the
 19 responsibility of overseeing the daily operations
 20 of the de Seversky Center." 17:01:38
 21 Do you see that?
 22 A. Yes.
 23 Q. Now why did you want to give Mr.
 24 Redlich that responsibility?
 25 A. Because I thought he was capable of 17:01:52

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1 R. Rizzuto
 2 Q. Did she ask you to make any revisions
 3 to the version that you provided to her before
 4 this?
 5 A. I don't recall. 17:16:17
 6 MR. FILOSA: Can we mark this as 15.
 7 (Rizzuto Exhibit 15, a two-page
 8 document Bates stamped D 03300 through 3301,
 9 marked for identification, as of this date.)
 10 Q. Now you have been shown a document 17:18:01
 11 that's been marked as Rizzuto Exhibit 15. It is a
 12 two-page document Bates stamped D 03300 through
 13 3301. Please review it and let me know when you
 14 are ready.
 15 A. Okay. 17:18:21
 16 Q. And this is an e-mail from you to Miss
 17 Jablonsky with an attachment.
 18 Do you see that?
 19 A. Yes.
 20 Q. And in the e-mail -- and it is dated 17:18:26
 21 October 20, 2009?
 22 A. Yes.
 23 Q. And in the e-mail that you write:
 24 "Carol, attached is the proposed organizational
 25 chart moving forward." 17:18:41

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1 R. Rizzuto
 2 A. Yes.
 3 Q. And what is it that's attached?
 4 A. It's the organizational chart with me
 5 taking on the top management position, I guess you 17:18:51
 6 would call it, at de Seversky Center.
 7 Q. And you will see on this one as
 8 compared to the prior organizational chart we
 9 looked at Mr. Baffo is not on this one?
 10 A. That's correct. 17:19:12
 11 Q. Is this a copy of the organizational
 12 chart that was going to be in place after the
 13 general manager position was eliminated?
 14 A. Yes.
 15 Q. And basically it has Mr. Redlich 17:19:21
 16 performing all of the functions that had been
 17 assigned to Mr. Baffo as the general manager?
 18 A. Not all.
 19 Q. What is not included in that?
 20 A. Payroll. I would have to think about 17:19:37
 21 it.
 22 Q. Payroll, scheduling?
 23 A. Scheduling -- everything gets, comes
 24 through me and gets approved through me. He would
 25 be responsible to make sure that scheduling like 17:20:01

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1 R. Rizzuto
 2 for the dining room would go to him and he would
 3 approve it against the payroll and revenue
 4 projections.
 5 Q. What about did he exercise any 17:20:12
 6 supervisory responsibilities over the executive
 7 chef?
 8 A. No.
 9 Q. Or anyone in the culinary staff?
 10 A. No. 17:20:23
 11 Q. Who would exercise that supervision?
 12 A. That would be me.
 13 Q. And is there currently an executive
 14 chef?
 15 A. No. 17:20:31
 16 Q. Who performs that function?
 17 A. I oversee the kitchen and I am
 18 training two young -- a woman and a man to
 19 eventually taking on that -- I have been putting
 20 them through a training program. 17:20:47
 21 Q. For how long?
 22 A. I am choosing -- I created these two
 23 positions called junior sous chefs because both of
 24 them wanted the sous chef position and in May we
 25 are going to have an exam and kind of and sort of 17:21:01

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1 R. Rizzuto
 2 practical and a written exam that they are going
 3 to have to take and I am going to have somebody
 4 from the Culinary Institute come down and assist
 5 me with the judging of it and one of them will 17:21:13
 6 come out as the sous chef and then the plan from
 7 there is to become chef du cuisine, and the reason
 8 that I am doing it this way and this is a perfect
 9 example of what I mean by training and development
 10 is so many times we throw people into a position 17:21:25
 11 like executive chef where they have a title but
 12 they don't have the experience to back it up and I
 13 am trying to make sure that these two are
 14 successful at this, because I had a disaster. I
 15 had this young kid that we named a sous chef and 17:21:38
 16 he couldn't handle the job and he eventually left.
 17 Q. Who was that?
 18 A. Bryan Robarge was his name.
 19 Q. This person is listed on this
 20 organizational chart? 17:21:52
 21 A. Yes.
 22 Q. How long had the executive chef
 23 position been vacant at this point?
 24 A. I can't give you an exact time. I
 25 don't know exactly. 17:22:05

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<p>1 R. Rizzuto</p> <p>2 A. Mm-hmm.</p> <p>3 Q. Why did you want to eliminate the</p> <p>4 general manager position during that week?</p> <p>5 A. I don't recall. 17:52:02</p> <p>6 Q. Was there any need to -- strike that.</p> <p>7 You hadn't filled the sales associate</p> <p>8 position or the dining room captain positions yet</p> <p>9 at that point had you?</p> <p>10 A. No. 17:52:16</p> <p>11 Q. So who was going to perform -- strike</p> <p>12 that.</p> <p>13 So why move forward with eliminating</p> <p>14 the general manager position before these other</p> <p>15 positions were filled? 17:52:25</p> <p>16 A. I am not sure. I am not sure why we</p> <p>17 chose that week or I chose that week.</p> <p>18 Q. Wouldn't you want to wait until you</p> <p>19 had someone for those positions so it would be an</p> <p>20 easier transition? Can I get an answer to the 17:52:36</p> <p>21 question?</p> <p>22 A. No.</p> <p>23 Q. But you wanted to move forward and</p> <p>24 eliminate the position the week of October 19th?</p> <p>25 A. As it states here, yes. 17:52:47</p>	<p>1 R. Rizzuto</p> <p>2 was taken aback by it.</p> <p>3 Q. And how did you respond?</p> <p>4 A. I don't remember exactly what I said,</p> <p>5 but I was pretty shocked. 17:54:02</p> <p>6 Q. Do you remember what time of day that</p> <p>7 was that he told you this?</p> <p>8 A. It was in the morning, but don't</p> <p>9 recall the time.</p> <p>10 Q. Do you remember what time you got into 17:54:12</p> <p>11 the office that day?</p> <p>12 A. No.</p> <p>13 Q. Do you know what time Mr. Baffo got in</p> <p>14 that day?</p> <p>15 A. No. 17:54:19</p> <p>16 Q. Had you spoken to him prior to his</p> <p>17 arrival that day?</p> <p>18 A. I don't recall.</p> <p>19 Q. And where were you when he told you</p> <p>20 that he had tested positive for HIV? 17:54:27</p> <p>21 A. In my office.</p> <p>22 Q. And this is the office that you shared</p> <p>23 with him?</p> <p>24 A. Yes.</p> <p>25 Q. Was anyone else present? 17:54:34</p>
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<p>1 R. Rizzuto</p> <p>2 Q. But you don't know why you wanted to,</p> <p>3 you selected that week?</p> <p>4 A. No.</p> <p>5 Q. So ultimately the decision was made to 17:52:54</p> <p>6 meet with Mr. Baffo on Friday the 23rd; right?</p> <p>7 A. Yes.</p> <p>8 Q. Which is a week after the position had</p> <p>9 been eliminated, because Mr. Aubrey had approved</p> <p>10 eliminating the position? 17:53:08</p> <p>11 A. Yes.</p> <p>12 Q. And did you ultimately meet with Mr.</p> <p>13 Baffo on that day?</p> <p>14 A. On the 23rd we did not do the</p> <p>15 termination on the 23rd. 17:53:27</p> <p>16 Q. And why not?</p> <p>17 A. Well, that morning Anthony came to me</p> <p>18 and sat down with me and said he needed to talk to</p> <p>19 me about something.</p> <p>20 Q. And what did he say to you? 17:53:38</p> <p>21 A. He said he was tested for HIV</p> <p>22 positive.</p> <p>23 Q. And did he say anything else?</p> <p>24 A. I don't recall the entire</p> <p>25 conversation, but that was the gist of it and I 17:53:51</p>	<p>1 R. Rizzuto</p> <p>2 A. No.</p> <p>3 Q. And what other than him simply telling</p> <p>4 you that he tested positive for HIV; did he say</p> <p>5 anything else? 17:54:43</p> <p>6 A. He said to me that he thinks that it</p> <p>7 had to do with -- he helped somebody that was</p> <p>8 bleeding and he thinks that that's how he</p> <p>9 contracted it.</p> <p>10 Q. Do you believe him? 17:54:55</p> <p>11 A. No.</p> <p>12 Q. Why not?</p> <p>13 A. I just -- he -- and normally I</p> <p>14 believe, I think Anthony is an honest guy, but I</p> <p>15 think he has been promiscuous. So that's the 17:55:15</p> <p>16 first thing that came to my mind.</p> <p>17 Q. Why do you think that?</p> <p>18 A. Because he had -- you know we have had</p> <p>19 discussions about women, nobody specific. I never</p> <p>20 really got into it with him, but I had heard 17:55:36</p> <p>21 chatter around that he fooled around.</p> <p>22 Q. And who did you hear that from?</p> <p>23 A. I don't recall.</p> <p>24 Q. Anyone that worked at the de Seversky</p> <p>25 Center? 17:55:52</p>

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